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February 17, 2020

Marijuana Regulatory Agency
Legal Section
P.O. Box 30205
Lansing, MI 48909

Re: Comments to Proposed Combined Topic-Based Rule Sets

To Whom it May Concern:

As the chair of the Cannabis Law Practice at Dykema, I am writing to offer comments on the Michigan Marijuana Regulatory Agency's (the "MRA") proposed combined topic-based rule sets: Marijuana Licenses; Marijuana Licensees; Marijuana Operations; Marijuana Sampling and Testing; Marijuana Infused Products and Edible Marijuana Products; Marijuana Sale or Transfer; Marijuana Employees; Marijuana Hearings; Marijuana Disciplinary Proceedings; Industrial Hemp for Marijuana Businesses; and Medical Marijuana Facilities (Rescinded) (collectively referred to as the "Proposed Rules") being promulgated pursuant to the Medical Marihuana Facilities Licensing Act ("MMFLA") and the Michigan Regulation and Taxation of Marihuana Act ("MRTMA").

As you know, our attorneys and government policy advisors represent clients in all facets of the medical and adult use cannabis industry. Our comments are based on our collective experience and the experience and views of many of our clients. Pursuant to the rulemaking process and the request for public comments, please find below Dykema's comments and recommendations on the proposed rules.

1. General Global Comments

Although most of our comments are targeted to isolated provisions within the Proposed Rules, and are set forth below on a rule by rule basis, two of our comments implicate issues that are reflected by multiple proposed rules.

First, as a general matter, all provisions related to Labor Peace Agreements should be eliminated. A mandate to enter into Labor Peace Agreements as a condition of licensure violates the National Labor Relations Act ("NLRA") and exceeds the statutory authority given to the

Department. Additionally, Labor Peace Agreements effectively place the terms and conditions of employment in the hands of an arbitrator. In an industry that is just beginning to find its way, and where income and expenses already fluctuate wildly, requiring critical economic decisions to be made by a third party does nothing to protect the interests of the industry, patients, consumers, and the state. Therefore, all provisions related to Labor Peace Agreements should be removed in entirety from all rule sets.

Second, we believe that there should be significant rewrites of the testing provisions. We have already seen instances where MRA has imposed new standards and ordered hundreds of thousands of dollars of product to be destroyed, only to then realize that the standards were flawed or should be implemented differently, and reverse course. Producers who were ordered to destroy product that MRA later determined was not harmful have suffered significant economic harm with no recompense. We believe these concerns are best addressed by allowing greater flexibility when it comes to remediation and by broadening the concept of administrative holds beyond simply cases of rules violations, to also encompass product that has initially failed testing. This would provide producers the ability to contest the appropriateness or sufficiency of testing standards without having to destroy viable product.

Third, we believe that the MRA should exercise its authority to establish new license types to establish a license for receiver businesses. As we have learned from other states, we should expect significant business failures in this industry. Yet, cannabis businesses cannot avail themselves of federal bankruptcy protection. Additionally, MRA's rules provide for the suspension and revocation of licenses. In an industry where licensees may have product midstream in growth or production, or significant inventories, suspending operations can lead to significant loss, and jeopardize the interests of creditors. This can also incentivize product diversion. Having licensed receivers able to step in to operate or liquidate facilities serves numerous public interests.

2. Marijuana Licenses 2019-67 LR

<u>R 420.1(1)(c)—Definition of "Applicant"</u>

The term "indirect ownership interest," used in 420.1(1)(c)(i), comes directly from the MMFLA but was not defined by the Legislature, leading to confusion and inconsistent practice and advice from attorneys in the industry. The Proposed Rules should either define the term or state that MRA will provide guidance as to the MRA's interpretation. We often see what may be considered indirect interests arise through the provision of equity in only one license of an entity that possesses multiple licenses, or with respect to one product line. Today, it is not clear if an indirect interest of 10% should be calculated based on total equity, total revenues, or some other metric. MRA guidance would be useful.

Also, we appreciate the express permission for both financing arrangements and licensing agreements. Under 420.1(1)(c)(ii)(A) and (D), however, we recommend defining the terms "reasonable interest rate" and "reasonable payment," respectively. At a minimum, the rules should state that MRA will provide guidance to the industry with respect to these terms.

R 420.1(1)(l)—Definition of "Employee"

Under 420.1(1)(l), the definition of "Employee" excludes "individuals providing trade services who are not normally engaged in the operation of a marihuana business." Dykema suggests that the language read "Employee" does not include "individuals providing trade ***or professional*** services who are not normally engaged in the operation of a marihuana business.

R 420.3—Application procedure; requirements

Under 420.3(2), Dykema suggests allowing prequalification status for grow facilities currently under construction to extend beyond 1 year to avoid having to re-qualify grow facilities whose municipal approval process and construction schedule often extends far beyond that timeframe. This is especially problematic when a municipality requires prequalification status as a condition to local approval, and prequalification status could be temporarily lost. Dykema suggests providing that the MRA may request updated information from an applicant within 90 days prior to the expiration of prequalification status, and allow applicants with their facility under construction to maintain uninterrupted prequalification status so long as circumstances have not changed in a manner that affects suitability.

R 420.4—Application requirements; financial and criminal background

Under 420.4(2)(a)(i)(C), Dykema suggests amending the language "all loans" to read "all loan types specified by the Department," thus providing explicit authority for the MRA to exclude auto loans, credit cards, student loans or other loans that the MRA may find to be unnecessary to examine.

Under 420.4(13), while we understand the need to have adult-use licensees pass a facility inspection on a timely basis, we also believe that this requirement provides municipalities the ability to sidestep important MRTMA protections, at least insofar as MRA requires local certificates of occupancy as a condition for passing inspection. As you know, MRTMA provides municipalities the ability to opt out of allowing adult use businesses in their communities, but MRTMA also explicitly states that ineligibility of an applicant to receive a license on this basis must be tested as of the time the applicant files its application. MRTMA also expressly provides that a municipal ordinance may not prevent an applicant from operating certain types of adult-use establishments where the applicant already has an operating MMFLA facility. Despite the fact that MMFLA and MRTMA operations and impacts are identical in nature (indeed, for many

license types the only observable difference is the color of the Metrc tag), we have seen municipalities refusing to issue certificates of occupancy for adult-use purposes to existing medical facilities. A licensee should have the ability to demonstrate to MRA that a municipality is improperly withholding documentation, without being forced to suffer a license denial and then sue either the MRA or the municipality.

R 420.5—Application requirements; complete application

Under 420.5(4)-(5), Dykema suggests allowing more than 5 days for applicants to supply missing information or proof of corrected deficiencies to the agency, at least in the case of MMFLA applicants for whom there is no 90-day deadline for MRA decision making.

R 420.10—Proof of financial responsibility; insurance

Dykema suggests adding language to sections (1) and (4) that would require licensees to maintain $100,000 in liability insurance ***per location*** as opposed to per license.

R 420.11—Capitalization requirements; medical marihuana facilities licensing act

Dykema suggests amending section (1) to read "On its initial application for licensure under the medical marihuana facilities licensing act, an applicant shall disclose the sources and total amount of capitalization to operate and maintain a proposed marihuana facility." In other words, the capitalization requirements should not be applicable to the expansion of existing facilities.

R 420.12—Denial of a marihuana license; additional reasons

Dykema suggests that 420.12(2)(e) and (n) apply to adult-use applicants only, as they again stem from the MRA's need to more quickly process adult-use applications.

R 420.13—Renewal of state license

Under section (1)(a) and (2) the MRA is requiring spouses on renewal applications to be fingerprinted, and apparently treating a disqualified spouse as a basis to disqualify an entity on renewal. This applies new "applicant" language from 2018 statutory amendments to both initial applicants ***and*** renewals. We believe this is entirely contrary to legislative intent and to the language of the MMFLA.

The original set of amendments proposed by LARA/BMMR in 2018 made the definitional change equally applicable to those in the application process and those who had yet to file. This caused a particular concern by essentially retroactively changing the standard for

those who had already filed applications. More specifically, this caused specific concerns for applicants who worked with Rep. Kesto to ensure the changes would not be retroactively applied; this was the genesis of the language limiting the effectiveness of the change to only applications submitted "on or after January 1, 2019." To now include and enforce these standards on renewal to entities that applied before January 1, 2019, would completely subvert and undermine the Legislature's intent in adding the January 1, 2019, language.

Additionally, to add these requirements on renewal is inconsistent with the statutory language itself. The MMFLA, as amended, makes an express distinction between "Applicant" and "Licensee" under the MMFLA, as amended, along with a possible argument about MRA not properly exercising its deference when carrying out the MMFLA depending on its ultimate position. The MMFLA has specifically defined both "Applicant" and "Licensee" and references the various definitions based on whether the license is being applied for or whether it is being renewed. Thus, an "Applicant" is not a "Licensee" and a "Licensee" is not an "Applicant." Michigan courts have continuously held that "[w]hen interpreting a statute, our primary obligation is to ascertain and effectuate the intent of the Legislature. To do so, we begin with the language of the statute, ascertaining the intent that may be reasonably inferred from its language." *Lash v Traverse City*, 479 Mich 180, 187 (2007). "When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." *Id*. The Michigan Supreme Court has further held that "ambiguity is a finding of last resort." *Stone v Williamson*, 482 Mich 144, FN 21 (2008).

The MMFLA defines "applicant" as "a person who applies for a state operating license." MCL 333. 27102(c). The statute further clarifies that applicant includes, "with respect to disclosures in an application, for purposes of ineligibility for a license under section 402, or for purposes of prior board approval of a transfer of interest under section 406, and only for applications submitted on or after January 1, 2019, a managerial employee of the applicant, a person holding a direct or indirect ownership interest of more than 10% in the applicant." *Id.* The MMFLA defines "Licensee" as "a person holding a state operating license." MCL 333.27102(j).

MCL 333.27402 provides that "[t]he board shall issue a license to an applicant who submits a complete application and pays both the nonrefundable application fee required under section 401(5) and the regulatory assessment established by the board for the first year of operation, if the board determines that the applicant is qualified to receive a license under this act." MCL 333.27402(1). Section 27402 further provides that "[a] license shall be issued for a 1-year period and is renewable annually. Except as otherwise provided in this act, the board shall renew a license if all of the following requirements are met: (a) The licensee applies to the board on a renewal form provided by the board that requires information prescribed in the rules; (b) The application is received by the board on or before the expiration date of the current license; (c) The licensee pays the regulatory assessment under section 603; and (d) The licensee meets the

requirements of this act and any other renewal requirements set forth in the rules." MCL 333.27402(9).

From the statutory language it is apparent that the Legislature intended to distinguish applicants (persons applying for a state license) and licensees (persons holding a state license). Section 27402 outlines the requirements for applicants to obtain a license, throughout the entire section pre licensure requirements are referred to by "applicant." However, provisions outlining the requirements for licensure renewal specifically reference the "licensee." Thus, the Legislature intended that the definition of applicant apply to only those seeking licensure, while the definition of licensee refer to holders of licenses.

Dykema suggests adding qualifying language to section (1)(a) and (2) carving out an exception for spouses of applicants and licensees whose original application was filed prior to January 1, 2019.

R 420.21—Designated consumption establishment license

Dykema suggests adding "***program or manual***" to section (2)(k) to read: "A documented employee training ***program or manual*** that addresses all components of the responsible operations plan."

R 420.27—Marihuana delivery business

Dykema recommends removing rule 420.27 in its entirety. Licensees who make significant investments in facility construction, inventory, and operating costs have a meaningful financial incentive to fully comply with statutory and regulatory obligations. A licensee who makes no such investment and has a role simply limited to delivering retail product does not have such incentives. This new license type simply presents too much risk.

3. Marijuana Licensees 2019-68 LR

R 420.108—Grower license

Under section (6), Dykema suggests defining "investor."

R 420.109—Processor license; exception for industrial hemp

Under section (1), Dykema suggests re-wording the section to read "A processor license authorizes purchase of marihuana only from a grower or another processor." Currently, the section allows the sale of marihuana from another processor but not the purchase. If the sale is authorized to another processor, it is inherent that the purchase would also be allowed. (We note

also that the title of this rule includes "exception for industrial hemp," yet the rule does not mention hemp.)

4. Marijuana Operations 2019-69 LR

R 420.201—Definitions

Under 420.201(1)(c), Dykema suggests extending the definition of Administrative Hold to include the failure to meet testing standards, and allow facilities having product that fails testing standards to hold the product during an investigation into alleged violations or sufficiency of testing standards.

Under 420.201(1)(e)(ii)(D), the MRA should define what is a "reasonable payment" under a licensing agreement.

R 420.203—Marihuana licenses; licensees; operations; general

420.203(2)(a) provides that "a marihuana business shall be partitioned from any other marihuana business or activity, any other business, or any other dwelling." While section (2)(a) provides an exception for operation of separate licenses at the same location and for operation of equivalent licenses at the same location, we believe that the current language does not fully contemplate the processing of industrial hemp. Section 7(1) of the Industrial Hemp Research and Development Act (the "Hemp Act") states that a processor licensed under the MMFLA may process industrial hemp. Therefore, we believe that language should be added at the end of section (2)(a) of proposed rule 420.203 to read "a marihuana business shall be partitioned from any other marihuana business or activity, any other business, or any other dwelling, ***other than activities in which marihuana businesses are entitled to participate, and provided further that growers and processors operated at the same location under R 420.204 shall not be required to partition.***" (This latter provision would eliminate the need for costly "mantraps" in co-located and integrated grower and processor facilities.)

Although the language of 420.203(2)(c) appears in the current rules, we believe that the MRA should remove the requirement that marihuana businesses must be contiguous. To date, MRA has allowed licensed activities to be in out-buildings on the same parcel as primary buildings (e.g., for grinding of waste). At a minimum, the MRA should at least define contiguous to mean structures located on one parcel.

Dykema suggests removing the prohibition against drive through operations in 420.203(2)(g).

R 420.204—Operation at same location

Dykema suggests amending 420.204(2)(d)(iii) to read "Have separate entrances, exits, inventory, record keeping, and point of sale operations ***other than for growers and processors at the same location***."

As noted above, in 420.204(2)(d)(ii) MRA should remove the requirement that marihuana businesses must be contiguous.

Dykema suggests adding a subsection (4)(d) under 420.204 that makes clear that a laboratory co-located with an existing non-marijuana testing laboratory must comply with all building security, design, and other MRA operational rules.

R 420.205—Equivalent licenses; operation at same location

Under 420.205(2)(c) to operate equivalent licenses at the same location, the operation cannot "circumvent a municipal ordinance or zoning regulation that limits the marihuana business under the acts." MCL 333.27956, however, provides that "[a] municipality may not adopt an ordinance that . . . prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act." Dykema suggest that this exact language be added to the end of (2)(c) after a "provided, however," in order to comply with the statutory requirements and prevent municipalities from sidestepping them.

R 420.206—Marihuana business; general requirements

Under 420.206(1)(b)(ii), cultivation may occur outdoors if "all drying, trimming, curing, or packaging of marihuana occurs inside the building meeting all the requirements under these rules." Dykema suggests adding "Provided, however, that marihuana may be transported to a grower or processor without drying, trimming, curing, or packaging of marihuana."

Under 420.206(8)(b), Dykema suggests defining the term "supervisory analyst."

Under 420.206(11), the term 'inactive ingredients' is a pharmaceutical product term. While the term and this requirement is sensible with respect to distillate blended with other products and intended for inhalation through vaping, to the extent that edibles or other supplements have ingredients that may be on the FDA inactive ingredient list, they are not intended to "facilitate the transport of marihuana in the body" and therefore the regulation makes no sense as applied to edible or ingestible marihuana products. As non-pharma products or supplements, such products should simply be required to list the ingredients pursuant to FDA labeling regulations (for food products).

420.206(14) requires marihuana businesses to comply with updated standards issued by the agency within 60 days of their adoption. However, for growers, 60 days does not provide enough time for a grow cycle to occur and product to be tested to comply with any changes. Therefore, Dykema suggests adding "Except in cases of public health emergencies, a lab must validate new tests within 60 days of adoption by the agency and growers and processors must meet the standards adopted by the agency within 150 days of adoption."

420.206(16)(a)-(b) quite simply amounts to a regulatory taking and must be removed. The agency has no statutory authority to force a sale of product to a third party "to ensure that all marihuana businesses are properly serviced." Such a regulation amounts to a regulatory taking and forces marihuana businesses to eliminate their competitive business advantage. By ***mandating*** sales in certain circumstances, it also puts the MRA itself in direct violation of the federal Controlled Substances Act, eliminating the defense to pre-emption challenges to the MMFLA (and, by extension, to MRTMA) relied upon by the Michigan Supreme Court in *Ter Beek v City of Wyoming*, 495 Mich 1 (2014). This step would thus threaten to undermine Michigan's entire statutory framework for the industry.

R 420.207—Marihuana delivery; limited circumstances

Under 420.207(3), Dykema suggests changing "shall establish procedures" to "***may*** establish procedures." (Otherwise, this could be read as mandating delivery for businesses that may choose not to engage in this practice.)

Under 420.207(4)(c), Dykema suggests amending the language to read: "All marihuana delivery employees meet the requirements in R 420.602 and are employees, ***as defined in R 420.601(1)(d)***, of the marihuana sales location.

R 420.208—Building and fire safety

Under 420.208(5), we believe that the MRA and Bureau of Fire Services needs to re-assess whether growers should be treated as an industrial use. This unique Michigan treatment has led to numerous requirements that are not present in any other state, including such absurdities as mandating sprinklers and specific paths and distances for marijuana planted outdoors under plastic high tunnels.

R 420.209—Security measures; required plan; video surveillance system

Under 420.209(3) Dykema suggests adding "***or other electronic or keypad access***" after "door locks." (The current mandate for commercial grade locks has been interpreted by some in MRA Enforcement to require low-tech deadbolt style locks, when electronic access controlled doors are more secure.)

5. Marijuana Sampling and Testing 2019-70 LR

R 420.301—Definitions

Under 420.301(1)(h) "Final Package" is defined as "the form a marihuana product is in when it is available for sale by a marihuana sales location." We believe the definition is ambiguous because it references the "form" of the product itself. The definition should reference the packaging, not the form of the product. Therefore, we suggest the definition be amended to read: "Final Package means the outermost container or box the marihuana product is house in when it is available for sale by a marihuana sales location."

R 420.303—Batch; identification and testing.

Dykema suggests that MRA clarify in 420.303(1) that each immature plant counts as one plant toward the grower plant count. As the MRA and others have determined, this is the count methodology required by the wording of the MMFLA. However, this provision for batch tagging in Metrc, while correct, continues to be misinterpreted, especially by new market entrants.

420.303(5) currently allows marihuana product that fails testing and is remediated to be sold or transferred once approved by the agency. We believe that agency approval should not be required for marihuana product that passes (under R 420.306) two subsequent re-tests following remediation.

Under 420.303(9), the MRA should change the language "anytime the marihuana product changes form" to read "anytime the marihuana product changes ***state***."

R 420.304—Sampling; testing

Under 420.304(2)(b)-(c), the MRA should amend section (2)(b) to read "The agency may publish sample sizes for other marihuana products being tested, ***and may provide for a maximum harvest batch size***." Additionally, the MRA should move the language at the end of section (2)(c) to the end of (2)(b) to now read "The laboratory must have access to the entire batch for the purpose of sampling and ***shall ensure that the sample increments are taken from throughout the batch***." (Sampling methodology should remain under the full control of the laboratory, not growers, and growers should not be held responsible for a laboratory's failure to take appropriate samples.)

In 420.304(2)(h), laboratories should be the parties responsible for uploading accurate data from the certificate of analysis into the statewide monitoring system. Certificates of analysis are not standardized, vary from lab to lab, and are commonly misunderstood.

Dykema suggests amending 420.304(2)(i) to read "This provision does not apply to a laboratory who engages another laboratory to perform certain safety tests on a subcontracted basis, ***or to a laboratory under common ownership***."

R 420.305—Testing; laboratory requirements

420.305(3) should be clarified so as to not interpret the section to mean a marihuana product needs to be tested every time it changes form (or state). Testing should be required before sale or transfer, but not when form changes due to processing.

420.305(10) currently sets a zero tolerance for chemical residue (pesticides). However, extremely low levels of pesticide residue is possible. We believe that chemical residue should have an action limit instead of a limit of quantification. Having an LOQ with a fail for even the slightest amount of chemical residue creates excess costs or production because potentially large batches must then be destroyed. At the very minimum we believe that R 420.306(3) should be amended to allow product that tests positive for chemical residue to be remediated to fall below the action limit allowable.

We believe that the accuracy thresholds for all licensed labs should be published by the department. This would allow other licensees to monitor and be aware of labs that are the most accurate.

The MRA should add a 420.305(2) stating that, "A marihuana business may have a failed batch R&D tested by a different laboratory to determine whether or not the laboratory that performed the initial test may have made an error. If an R&D test contradicts the failed result, the department will investigate the failed result and may have the item selected for random sampling by another licensed lab."

Finally, Dykema suggests adding a provision to Rule 420.305 that allows laboratories prelicensure possession of marihuana for the purpose of validating testing equipment. (With the passage of MRTMA, owners and operators of prelicensed laboratories have the legal authority to possess marijuana.)

R 420.306—Testing marihuana product after failed initial safety testing and remediation

Dykema suggests amending 420.306(2) to add a provision that prevents immediate destruction of product if the marihuana business is challenging the validity of testing. In this case, product would be required to be placed under an administrative hold as defined in R 420.501.

As discussed above, 420.306(3) is not ideal in practice. Currently, the rules propose a zero tolerance for chemical residue. However, ultra-low levels of chemical residue can be

attributable to accidental contamination rather than the use of a banned pesticide. Section (3) should be amended to allow processors to remediate the material to remove chemical residue. The implementation of the current section, as written, will result in exponential loses to licensees and a shortage of product for customers and patients. Growers are vulnerable to large losses as a result of accidental environmental contamination, while processors are vulnerable to large losses due to an accumulation of contamination during processing, even where no banned pesticide was utilized.

420.306(4) should be amended to specify that processors will be allowed to remediate any material that can be remediated. Additionally, this rule should allow processors to transfer material to another processor for remediation.

Finally, Dykema suggests amending section (4) to read "The agency ***shall*** publish a remediation protocol."

R 420.307—Research and Development

We believe that R&D testing should be allowed before or after final compliance testing.

6. Marijuana Infused Products and Edible Marijuana Product 2019-71 LR

R 420.403—Requirements and restrictions on marihuana-infused products; edible marihuana product

420.403(6) should be amended in accordance with our comment to R 420.206(11): The term 'inactive ingredients' is a pharmaceutical product term. To the extent non-medical marihuana products have ingredients which may be on the FDA inactive ingredient list, they are not intended to "facilitate the transport of marihuana in the body" and therefore the regulation makes no sense as applied to edible or ingestible marihuana products. As food or supplements, such products would be required to list the ingredients pursuant to FDA labeling regulations.

R 420.404—Maximum THC concentration for marihuana-infused products

420.404 should be amended to read "A marihuana sales location shall not sell or transfer marihuana infused products that exceed, ***by more than 15%***, the maximum THC concentrations established by the agency."

7. Marijuana Sale or Transfer 2019-72 LR

R 420.504—Marihuana product sale or transfer; labeling and packaging requirements

Under 420.504(1)(i), listing the name of the laboratory that performed ***any*** test, ***any*** associated batch number, and ***any*** test analysis date is very cumbersome and should be limited to certain laboratories, batch numbers, and analysis dates.

Under 420.504(1)(k)(iii), Dykema suggests amending the language to read: "For products being sold by a licensee under the medical marihuana facilities licensing act ***that exceed maximum THC levels allowed for products sold under MRTMA***, "For use by individuals 21 years of age or older only. Keep out of reach of children."

Additionally, under section (1)(k)(iv), Dykema suggests amending the language to read: "For ***all other*** products being sold by a licensee, "For use by individuals 21 years of age or older or registered qualifying patients only. Keep out of reach of children."

Together, the above changes would enable licensees to use the same labels for products that are allowed for both medical and adult-use customers, thereby reducing the costs incurred by growers and processors.

R 420.505—Sale or transfer; marihuana sales location

Dykema suggests amending section (1)(e) to read "A licensee ***selling marihuana product pursuant to*** the medical marihuana facilities licensing act."

R 420.507—Marketing and advertising restrictions

Under 420.507(6), Dykema suggests moving "under the medical marihuana facilities licensing act" to after "marihuana product" so that section (6) would read: "A marihuana product ***under the medical marihuana facilities licensing act*** must be marketed or advertised as 'medical marihuana' for use only by registered qualifying patients or registered primary caregivers."

Under 420.507(7), Dykema suggests moving "under the medical marihuana facilities licensing act" to after "marihuana product" so that section (7) would read: "A marihuana product ***under the medical marihuana facilities licensing act*** must not be marketed or advertised to minors aged 17 years or younger."

8. Marijuana Employees 2019-73 LR

R 420.602—Employees; requirements

Dykema suggests amending sections (6) and (7) to insert "***or professional***" after the word "trade".

9. Marijuana Hearings 2019-74 LR

R 420.706—Complaint by licensee

Dykema suggests adding a section that allows licensees to contest the standards set for testing.

10. Marijuana Disciplinary Proceedings 2019-75 LR

R 420.808—Citation

Dykema suggests amending section (7) to allow a licensee to provide "***a written response***" instead of limiting the response to one single page.

11. Industrial Hemp Rule for Marihuana Businesses 2019-88 LR

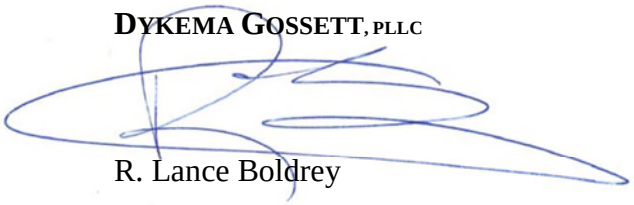
R 420.1003—Processing industrial hemp.

Sections (1), (2) and (5) of 420.1003 expressly require a medical or adult-use marijuana processor to comply with the Hemp Act and associated rules promulgated by the Michigan Department of Agriculture and Rural Development if the processor handles, processes, markets, or brokers industrial hemp. This would pose a serious compliance issue for marijuana processors that choose to process industrial hemp for several reasons. First and foremost, industrial hemp and marijuana are both defined as the plant Cannabis sativa L., with the only distinction between the two being the delta-9-tetrahydrocannabinol (THC) concentration of the plant. Under the Hemp Act, any cannabis in the processor's possession that exceeds .3% THC concentration would be considered non-compliant industrial hemp and would need to be destroyed. Thus, a marijuana processor that processes both industrial hemp and marijuana would not be in compliance with the Hemp Act because it would be processing and in the possession of cannabis with a THC concentration that exceeds the allowable limit under the Hemp Act. Similarly, a marijuana processor would be unable to use any industrial hemp-derived CBD or other ingredients in its finished marijuana products.

Therefore, the rule should be clarified to exempt marijuana processors from complying with the Hemp Act if and when the marijuana processor handles, processes, markets, or brokers cannabis with a delta-9-THC content greater than 0.3% on a dry weight basis.

Regards,

DYKEMA GOSSETT, PLLC



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MICIA COMMENTS ON DRAFT MARIHUANA RULES

(Rule sets # 2019-67 LR, 2019-68 LR, 2019-69 LR, 2019-70 LR, 2019-71 LR, 2019-72 LR, 2019-73 LR, 2019-74 LR, & 2019-75 LR.)

INTRODUCTION

The Michigan Cannabis Industry Association (MICIA) is the leading voice for Michigan's legal cannabis businesses. The association advocates for a responsible and successful medical and adult-use cannabis industry by promoting sensible laws and regulations and industry best practices among members. MICIA seeks to create a thriving industry for cannabis businesses in Michigan by developing opportunities for industry collaboration and partnerships and sharing industry knowledge and best practices among its membership.

MICIA supports many elements of the proposed rules. But MICIA offers the following constructive comments with the hopes of developing policies that promote both the growth of the industry and the establishment of good business practices. Moreover, MICIA seeks to ensure that the Marijuana Regulatory Agency (MRA) receives adequate stakeholder input prior to the adoption of its generally applicable policies, standards, and enforcement procedures consistent with the rule of law and the Michigan Administrative Procedures Act, MCL 24.201 *et seq*. Lastly, MICIA notes that, though it has not exhaustively commented on all of the rules, its silence on some rules should not be understood as either approval or disapproval of those particular provisions.

COMMENTS

1. Licensing Rules (R 420.1 *et seq.* and R 420.101 *et seq.*)

Licensing Prequalification Application Procedures

Proposed Rule 420.3(2) provides, in part, that prequalification status for a pending application is valid for 1 year after the agency issues a notice of prequalification status unless otherwise determined by the MRA. After 1 year has expired, the proposed Rule authorizes the MRA to require the applicant to submit a new application and pay a new nonrefundable application fee. While the permissive language of the proposed Rule provides that MRA with a great deal of flexibility, MICIA suggests that the MRA extend the period under which an incomplete, pending application may be held in prequalification status from a one-year or a two-year period. Oftentimes prequalified applicants who are actively under construction require more than one year to complete the final application due to circumstances beyond their control such as delay or inaction by contractors and/or local or county governments. To require those applicants to redo their

application and pay a new nonrefundable application fee under those circumstances can be unduly burdensome during the startup phase of a new business.

Licensing Application Procedures – Control

Proposed Rule 420.4(2)(*iv*)(B) requires applicants to disclose "any other person who . . . [i]s controlled, directly or indirectly, by the applicant or by a person who controls, directly or indirectly, the applicant." This cumbersome requirement has been difficult to understand and could theoretically require disclosure of a string of persons far removed from the applicant. MICIA suggests that this language be removed, limited, or further clarified.

Application Deficiencies – Opportunity to Cure

Proposed Rule 420.5(4) and (5) provides an applicant 5 days to correct any deficiency in the application. Failure of an applicant to correct a deficiency within 5 days of notification by the agency may result in the denial of the application. MICIA suggests that this timeframe be extended to ten days or, at least, be revised to provide five "business days" excluding holidays to cure application deficiencies.

Mandated Labor Peace Agreements

MICIA is opposed to the rules' mandate that licensees enter into and abide by labor peace agreements. R 420.5(6), R 420.13(1)(e), R 420.14(3)(h), & R 420.21(2)(m), R 420.801(1)(e), & R 420.802(3)(h). A legal mandate forcing a unionized workforce on applicants is both wholly unnecessary and unrelated to an applicants' qualifications to operate a marijuana establishment. The mandate also raises a number of significant legal concerns, including but not limited to whether it conflicts with federal law governing private-sector labor relations and state law preventing forced unionization. MICIA further believes such requirements are beyond the agency's delegated rulemaking authority under MCL 333.27206, MCL 333.27957, & MCL 333.27958. Additionally, the MRA has failed to engage in any cost-benefit analysis related to this requirement and its impact on the industry. See generally MCL 24.245(3).

Civil Lawsuit Reporting Requirement

Proposed Rule 420.14(5) requires applicants to notify the agency within 10 days of the initiation or conclusion of any new civil lawsuits or legal proceedings that involve the applicant. To the extent such actions are unrelated to any criminal or regulatory actions, this requirement is unnecessary and should be removed. The reporting requirement provides an incentive for third parties to target and seek to obtain leverage over licensees by threatening non-meritorious litigation. MICIA, however, continues to support reporting for civil judgments entered against licensees.

Excess Marihuana Grower Licenses

MICIA supports the MRA's inclusion of excess marihuana grower licenses. R 420.20(1)(b); & R 420.22. MICIA views this license as a significant means of addressing a market shortage of available product by permitting larger scale cultivation.

Marihuana Event Organizer Licenses and Temporary Event Licenses

MICIA supports the MRA's inclusion of marihuana event organizer licenses and temporary event licenses. R 420.20(1)(c), (1)(d), & (3); R 420.23; & R 420.24. MICIA sees both as a positive means of facilitating industry development and social consumption.

Marihuana Delivery Business License

MICIA opposes the MRA's development of rules allowing the licensure of standalone delivery businesses permitted to operate without a secured transporter license and without obtaining local approval. See R 420.20(1)(e) & R 420.27. MICIA believes that these services are more effectively regulated and tracked at licensed marihuana retail locations or when directly consummated by licensed marihuana retailers.

Research and Development License

MICIA proposes that the MRA develop and adopt rules to promote the growth of facilities specializing in genetic advancement of marihuana plant strains, seeds, and clones for sale via secured transporters to licensed growers.

Marihuana Plant Count – Female Flowering

MICIA supports the clarification in proposed Rule 420.102 that only female marihuana plants that flower may be included in the plant count referenced in subrule (1) of this rule. This treatment more accurately reflects marihuana growth and harvest cycles and should help alleviate the current supply shortage. MICIA further suggests replacing the phrase "female marihuana plants that flower" with the phrase "flowering marihuana plant" and defining that term as "a marihuana plant that has visible calices, stigma, or preflowers located at the node or a stem or branch."

Marihuana Transfers

MICIA supports the more flexible marihuana transfer provisions for licensed growers, processors, and retails in proposed Rule 420.102, 420.103, and 420.104.

2. Operations Rules (R 420.201 *et seq.*)

Orders Limiting Sales from Cultivators and Producers to Retailers Under Common Ownership

Proposed Rules 420.206(16)(a) & (16)(b) authorize the MRA to set orders limiting the sales from cultivators and producers to producers and marihuana sales locations under common ownership and establish sanctions and fines for violations of those orders. MICIA supports the concept of encouraging supply to licensed retailers who are not part of a vertically integrated operation and thus maintaining the value of separate license types. But MICIA believes that this issue can have a substantial impact on the industry and requires further study. Accordingly,

proposed rules should be withdrawn and a stakeholder workgroup should be established to provide more industry input on this issue before adoption of regulation on this topic.

Further, MICIA believes that, as part of that study, the MRA should identify either quantitative thresholds or qualitative standards for when the agency would exercise this authority. Although MICIA understands the MRA's position that these rules discourage stockpiling and promote adequate supply and distribution, MICIA requests that, to avoid inconsistent or arbitrary application of its authority, the MRA set standards to clarify the quantitative thresholds at which the agency may impose such an order or the limitations the agency intends to place on the amount of product that may be sold to entities under common ownership.

Prohibition on Sale of Fresh Food and Beverages

Proposed Rules 420.203(2)(b)(i) & (2)(b)(ii) prohibit marihuana businesses from allowing the onsite sale, consumption, or serving of food or alcohol unless designated as a consumption establishment and also prohibit the consumption, use, or inhalation of marihuana product without such license. See also R 420.201(1)(k) (defining "designated consumption lounge"). MICIA notes that MRA enforcement has interpreted this as prohibiting the sale or consumption of all kinds of beverages such as coffee, tea, or juice. MICIA recommends changing this rule to permit the sale of fresh food and non-alcoholic beverages at retail locations without additional approvals or licenses.

Access to Licensee Records

Proposed Rule 420.203(f) provides that "[l]icensee records must be maintained and made available to the agency upon request." MRA has taken the position that this language requires "immediate" access upon request. Many vertically integrated marihuana businesses maintain their records at a corporate headquarters and/or have security protocols that prevent immediate access to such records which presumably has a broad definition. MICIA recommends clarifying this language to provide access to records within 24 hours after a request.

Waste Removal Requirements

Proposed Rule 420.211(6) restricts a licensee's options for the disposal of marihuana product waste and marijuana plant waste to landfilling, composting, anaerobic digestion, and incinerator at a permitted, in-state municipal solid waste or hazardous waste incinerator. MICIA views these options for disposal as too restrictive. MICIA instead recommends that the MRA consider other innovative, sustainable, and/or environmentally responsible options for on-site disposal that may be more beneficial to the environment. MRA may thus amend the proposed rule to add the following language "or alternative method not listed with approval from the department." Along these same lines, MICIA further supports proposed Rule 420.211(13) which provides that "[n]othing in these rules prohibits a grower, with agency approval, from disposing of marihuana plant waste as compost feedstock or in another organic waste method at their marihuana business in compliance with part 111 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11153."

Generic Adoption of the NREPA and Failure to Promulgate Rules Regarding its Application

Proposed Rule 420.203(3)(a) adopts entirely the application of the NREPA, MCL 324.101 to MCL 324.90106 to marihuana businesses without explaining which provision the MRA views as applying to particular circumstances and stating that "[t]he agency may publish guidance" to that effect at a later date.

MICIA and its members support good stewardship of the environment but oppose the imposition of new marihuana-specific environmental laws without the benefit of industry participation and other stakeholder's feedback through rulemaking. To the extent the MRA intends to set generally applicable policy on the environmental obligations of marihuana businesses that either the MRA or EGLE intends to enforce, such "guidance" must be promulgated. MCL 24.207; MCL 24.226.

Alternatively, MICIA requests that this new requirement not go into effect until one year after promulgation.

Broad Assertion of Agency Authority Unrelated to any Express Statutory Grant

Proposed Rule 420.203(3)(b) subtly assumes expansive authority to the MRA to require broad operational changes to marihuana businesses. The proposed rule states that "[a] marihuana business shall comply with . . . (b) *Any other operational measures requested by the agency that are not inconsistent with the acts and these rules*." (Emphasis added.)

MICIA opposes this assumption of broad and undelegated authority by the MRA. The agency's assertion of such broad power over marihuana businesses as to demand any operational changes "not inconsistent with" the law inverts the axiom that, as creatures of statute, administrative agencies can only assert the power expressly granted to them by law. See *York v City of Detroit*, 438 Mich 744, 767 (1991) ("While an administrative agency may make such rules and regulations as are necessary for the efficient exercise of its powers expressly granted, ''an administrative agency may not, under the guise of its rule making power, abridge or enlarge its authority or exceed the powers given to it by the statute, the source of its power.'")

Equivalent Licenses Operating at Same Location

MICIA supports the common-sense and efficient approach contained in proposed Rule 420.205 allowing equivalent licenses with common ownership to be operated at the same location.

3. Sampling and Testing Rules (R 420.301 *et seq.*)

Homogenizing of Samples

Proposed Rule 420.304(2)(b) requires the collection of samples of "not less than 0.5% of the weight of the harvest batch" and requires samples to be "homogenized for testing." This language seems to allow for unlimited batch sizes and marks a drastic departure from existing standard of 15-lb batches. MICIA suggests that, because contamination can spread out in a heterogeneous manner, it would be more appropriate to split samples up across batches with some

form of weight-based limitation in order to obtain a more representative sample of harvests. For example, under the proposed language, a 1,500 lb. summer "harvest batch" would require 7.5 lbs. to be tested and 50% of that homogenized. But sorting that harvest batch into smaller batches would provide better data on the quality of the product.

Scope of Laboratory Accreditation

Proposed Rule 420.305(1)(a) requires laboratories to be accredited within 1 year of licensing but do not clarify whether specific assays or analytes must be included within its accreditation. MICIA recommends that the MRA modify this rule to allow the MRA to approve and validate a Safety Compliance Facility's new method and to allow at least 6 months for a scope expansion within the Safety Compliance Facility's regular ISO surveillance period.

Good Manufacturing Practices Certification and Adoption

MICIA strongly supports the provision of the rules allowing for good manufacturing practices certification and adoption as applied to marihuana businesses. R 420.301(1)(i); R 420.305(4); R 420.602(2)(h).

Filing of Certificates of Analysis with the MRA for Failed Samples

Proposed Rule 420.305(12) requires laboratories to "enter the results into the statewide system and file with the agency within 3 business days of test completion" each laboratory test result "for any batch that does not pass the required tests." MICIA reads this requirement to unnecessarily mandate a duplicative "fil[ing]" of certificates of analysis with the agency after the results have already been entered into the statewide system. Because the laboratories will enter this information into the statewide system electronically, MRA should modify this requirement to clarify that it will not require a separate filing from laboratories. MICIA further seeks clarification regarding whether the language "test completion" refers to the completion of each individual test or when the full panel of tests per sample are completed.

Encouragement of "Laboratory Shopping"

Proposed Rule 420.306(2) prohibits laboratories that conduct an initial failed test of a sample from performing any retesting. The proposed rule has the perverse effect of encouraging laboratory shopping and discouraging the reporting of failed test results by laboratories. Rather than discourage accurate test reporting for failed samples, MICIA suggests that this language should be removed.

Retesting and Remediation

The MRA's proposed limitations on retesting and remediation, R 420.306(2) & (3), are unduly restrictive. The agency should broaden these provisions to allow for more extensive retesting and remediation. MICIA, however, supports R 420.306(4) which appears to allow quarantined product to be transferred between licensed processors for purposes of remediation as not all processors own applicable remediation equipment.

Failure to Promulgate Action Limits and LOQs

The rules require the agency to establish both action limits setting standards for "the permissible level of a contaminant in marihuana product" such as foreign matter, microbial screening, heavy metals, and residual solvents, R 420.301(1)(1)(a) and R 420.305(3)(b)–(3)(f), (6), & (9), and limits of quantification (LOQs) for chemical residue and target analytes. R 420.301(1)(n) and R 420.305(3)(i) & (10). Those action limits and LOQs are attended by significant consequences. Product failing to meet the standards "must be destroyed as provided in these rules or remediated" as permitted by the agency. R 420.306(2)–(4). The proposed action limits and LOQs thus set "agency regulation[s], . . . standard[s], . . . [and] polic[ies] . . . of general applicability that implement[t] or appl[y] law enforced or administered by the agency." MCL 24.207. As such, the action limits and LOQs are "rules" requiring promulgation in order to be enforceable by the agency. MCL 24.207; see also MCL 24.226; & MCL 24.232(5).

MRA's failure to include the proposed action limits and LOQs in the rules improperly circumvents the APA's rulemaking requirements. *Delta Co v Dep't of Natural Resources*, 118 Mich App 458, 468 (1982). Further, the failure to vet these standards through the rulemaking process and to allow the industry and other groups to have input into their development and their propriety for the purpose of establishing health-based standards will result in less technically accurate action limits and render them legally unenforceable.

Failure to Promulgate Remediation Protocol

Similarly, the rules delay to a later time the publication of a "remediation protocol." R 420.306(4). Like the action limits, this protocol sets "generally applicab[le]" agency policy "that implements or applies the law enforced or administered by the agency." MCL 24.207. Consequently, the remediation protocol is also a rule that needs to be promulgated.

Failure to Promulgate Safety Test Requirements

Additionally, the MRA has elsewhere circumvented the rulemaking process for safety test requirements, indicating that "the agency may publish a guide indicating which of the following tests are required based on product type when marihuana product has changed form." R 420.305(3). As noted above, such a decision sets an agency policy of general applicability concerning the law it enforces. MCL 24.207. Deciding which tests will be required for sampling and analyses must be vetted through rulemaking and included in this set of rules rather than via a later "guide" or bulletin. MCL 24.226; *Detroit Base Coalition*, 431 Mich at 183–84.

Vape Cartridge Testing

MICIA suggests the adoption of a rule to require vape cartridges to be tested for Vitamin E-acetate (ATA). Because of the recent outbreak of injuries associated with vape cartridges containing ATA, such a rule would promote the public health.

4. Sales and Transfers (R 420.501 *et seq.*)

Internal Product Sampling by Employees

Proposed Rule 420.509(5) permits cultivators to provide internal product samples to their employees but limits those samples to 2.5 ounces in a 30-day period. MICIA supports the rules' encouragement of employees' product sampling. Employee product sampling can foster familiarity with and develop their expertise concerning the product, which facilitates better operations and encourages sales. But the MRA's proposed limitation is too stringent and improperly sets a limitation that does not take into account the size of or number of employees at an operation. MICIA instead proposes that the MRA extend this provision to allow cultivators to provide internal product samples of up to 1 ounce per employee per month. MICIA further seeks clarification of what level of documentation will satisfy the requirement that "[t]he results of internal product sampling must be documented . . . ."

5. Non-compliance with APA Procedures (all sets)

MICIA also notes that the MRA has improperly failed to comply with APA procedural requirements for this set of rules in several respects. Per MCL 24.245(3)(*l*), (3)(*m*), & (3)(*n*) the MRA was required to include in its Regulatory Impact Statement and Cost Benefit Analysis (RIS-CBA) "an estimate of the actual statewide compliance costs of the propose rules on individuals" and "an estimate of the actual statewide compliance costs of the proposed rules on business and other groups" as well as "a demonstration that the proposed rule is necessary and suitable to achieve its purpose in proportion to the burdens it places on individuals." The RIS-CBAs in support of the rules do not engage in any significant substantive analysis of the economic impacts of the proposed rules on individuals and businesses nor include any numerical estimates of these impacts.

Additionally, MCL 24.245(3)(*o*)–(3)(*s*) require detailed analysis of and estimates of the financial impacts of the rules on small businesses. The RIS-CBAs do not provide any such estimates nor any substantive analysis and simply state that "[i]t is uncertain how many small businesses may be affected by the proposed rules" but that "the belief is that these proposed rules will make it easier for small businesses to enter the regulated market." The RIS-CBAs make such a statement without analyzing the barriers to entry imposed on small businesses as a result of the licensing and operational costs associated with the rules.

The rules also fail to estimate the impacts to state and local revenues as a result of the rules. MCL 24.245(3)(*z*) & (3)(*dd*). In response to question # 13 posed by the RIS-CBA requiring an "[e]stimate [of] any increase or decrease in revenues to other state or local governmental units . . . as a result of the rule," the agency merely states that "[t]here are no anticipated increases or decreases in revenues or costs to other state or local government units as a result of the proposed rules." This suggestion is not credible. Given the various direct compliance costs and other regulatory burdens imposed by the rules, the agency's failure to estimate the impacts of these burdens on marihuana businesses' sales and the resultant impact on state and local revenues through the State's corporate income tax, MCL 206.601 *et seq*, local income tax paid by both the businesses and their employees, MCL 141.501 *et seq*, sales tax, MCL 205.51 *et seq*, use tax, MCL

205.91 *et seq*, the General Property Tax Act, MCL 211.1 *et seq*, and of course, the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq*., is unsupportable.

As one example, the testing and sampling rules' requirement to test "not less than 0.5% of the weight of the harvest batch," R 420.304(2)(b), means that at least 0.5% of such a harvest is not being sold. That cost has not been calculated and weighed against the alleged benefit of the sufficiency of that sample size to conduct required tests, the impact of sample size on sampling accuracy, and whether a smaller sample size would achieve the same goals. Nor has the agency calculated the impact of its proposal limiting the ability to remediate and retest (and ultimately requiring the destruction of) marihuana that does not meet action limits. See generally R 420.306. Recent market values of marihuana have averaged over $500 per ounce through licensed operations. See https://www.mlive.com/public-interest/2020/02/major-marijuana-website-bans-advertisements-from-black-market-companies-in-michigan.html. Consequently, small alterations to the scope of such requirements can impose a substantial cost on large volumes of sales as well as attendant costs state and local revenues of a minimum of 16% in sales and marihuana excise taxes. MCL 205.52(1); MCL 333.27963(1).

These procedural defects deprive stakeholders, the Legislature, and the agency of a more substantive debate regarding the costs and benefits of individual proposed rules. Additionally, the defects can render the rules invalid through an APA procedural challenge. MRA should therefore resubmit the rules with these legislatively required analyses.

CONCLUSION

MICIA appreciates the opportunity to comment on the MRA's proposed rules and the MRA's efforts to develop a sound regulatory structure for the cannabis industry. MICIA believes that, with the changes suggested above and with greater industry feedback and more thorough vetting of the costs and benefits of proposed regulations, Michigan can be a leader both economically and in its promotion of good business practices for the industry.

Respectfully submitted,

Robin Schneider, Executive Director
Michigan Cannabis Industry Association
www.MICannabisIndustryAssociation.org

From:	Ben Joffe
To:	MRA-Legal
Cc:	Brisbo, Andrew (LARA)
Subject:	Comments to proposed rules
Date:	Tuesday, February 11, 2020 4:08:10 PM

MRA Legal and Director Brisbo,

In our review of the rules we noticed that there is no language covering who is an applicant under a trust in the MRTMA. The MMFLA and MRTMA use equivalent definitions of the term "Person"

- MCL § 333.27953(s): "Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- MCL § 333.27102(r): "Person" means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

However, in MCL § 333.27401(1)(b), the MMFLA provides that a trust applying for a state operating license must disclose the names and addresses of the trust's beneficiaries.

There is no comparable language anywhere in the MRTMA or draft rules addressing who is an applicant/must be disclosed for trusts applying for a state license.

Can MRA provide clarity on the application and disclosure requirements for trusts that are applying as an entity for state licensure under the MRTMA in the proposed rules?

Regards,

Ben

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From: Roma Thurin
To: MRA-Legal
Cc: Gabriel Thurin
Subject: Comments to the Proposed MMFLA/MRTMA Rules
Date: Monday, February 17, 2020 2:10:56 PM

Good afternoon,

Please find below, comments to proposed rules:

Extension of Pre-Qualification longer than one year	
CONSIDERATION:	Applicants were initially encouraged to apply with BMMR/MRA for pre-qualification prior to many municipalities passing ordinances. It takes a significant amount of time – much longer than one year, to obtain property, build out a facility and obtain municipal special use permits, certificate of occupancy, and permission to operate. There are many unforeseen circumstances, additional costs and construction delays with many municipalities permitting facilities in areas with a lot of blight and abandoned buildings.
RECOMMENDATION:	Remove this unnecessary requirement that all pre-qualified entities received an MRA state license within one year. At a minimum require only an extension application attesting to no changes in an entity's organizational structure and supplemental applicants' status.

Support Labor Peace Agreements for cannabis licensees with more than 20 employees	
CONSIDERATION:	Assist with social equity into an industry where minorities and women are marginalized. It does not necessarily mean unionization. Assist with creating a solid labor workforce.
RECOMMENDATION:	Keep the requirement

Allow vertically integrated entities to have one access point for entrance and exist (R 420.204)	
CONSIDERATION:	This would create more efficiency in cultivator security measures on-premise such would be controlled through a single access point.
RECOMMENDATION:	Remove this unnecessary requirement.

One security camera system for multiple entities (R 420.204)	
CONSIDERATION:	Creating multiple security systems that are not integrated creates administrative burden and can lead to security risks as opposed to one centralized system that can be easily monitored.

RECOMMENDATION:	Allow one security system for multiple entities under the same location

Escorting non-employees rule is too restrictive 420.209 (2)	
CONSIDERATION:	As the industry expands, cultivators should have access to "trusted contractors" who have been background checked to be allowed to go unescorted in areas where there is no marijuana product.
RECOMMENDATION:	Modify current language to read: ***"A licensee shall ensure that any person at the marihuana business, except for employees of the licensee trusted contractors of the licensee, are escorted at all times by the licensee or an employee of the licensee when in the limited access areas and restricted access areas at the marihuana business."***

A licensee required to have cameras that record continuously 24 hours per day 402.209 (9)	
CONSIDERATION:	The current rule requires cameras to record constantly, which drains resources and makes it harder to find sections of recordings that have actual activity in them.
RECOMMENDATION:	Remove "record continuously" language and replace it with motion detection language.

Waste management /onsite mulching (420.211, Rule 11)	
CONSIDERATIONS:	Currently there are no environmentally friendly ways of disposing of cannabis waste products. As an outdoor grower that is trying to limit the carbon footprint of the cultivation facility, we would like for the rules to reflect more environmentally friendly manners of repurposing the waste vs the option of incineration or transportation, both of which have an adverse effect on the environment. The size of in-vessel digester it would take to do this at a large-scale operation is impractical.
RECOMMENDATION:	Allow outdoor grow operations to bury this waste within the secure perimeter in a green-friendly manner.

The stringency of heavy metals tests (R 420.306)	
CONSIDERATIONS:	There are ways to remediate cannabis flower and trim without compromising safety or the other important qualities of the plant.

	Consideration should be given to the fact that there is no standardized testing or exact science to remediation and thus it may require more than a couple of tests to get the plant to meet the required testing standards.
RECOMMENDATION:	Ability to retest a failed sample more than twice.

Grace periods / ample warning for new rules and standards	
CONSIDERATIONS:	In the 2019 calendar year, Nickel was added to the list of heavy metals without warning to cultivators who already had their harvests in the ground. Due to the sudden addition of the test, cultivators were not able to react accordingly and remediate or course-correct the issue in order to find a solution.
RECOMMENDATION:	For future implementations of restrictive rules changes allow a nine-month grace period unless it's an emergency situation that presents a clear and present danger.

Testing prior to moving product between entities (R 420.303 Sub-rule 6, R 420.304 and R 430.305)	
CONSIDERATIONS:	When moving product between cultivation and processing, the proposed system of testing would be inefficient. If product is tested prior to moving between a cultivator and a processor, and then again before it reaches consumers, it would have an adverse effect on the industry due to costs. It also has adverse effects on testing facilities which are already overburdened and have been the source of bottlenecking flower getting to market.
RECOMMENDATION:	Remove or do not move forward with this unnecessary requirement, not only between co-located entities, but between co-owned entities as well.

Requiring permission to remediate failed product (Rule 46 R 333.246)	
CONSIDERATION:	The product will need to pass testing in order to enter the market. However, requiring permission to remediate creates additional and unnecessary steps that slow down the production process.
RECOMMENDATION:	Remove this unnecessary requirement.

Sale and Transfer (420.501-511)	
CONSIDERATIONS:	With a supply shortage of cannabis biomass and the high retail

	price of flower, there are no current processors that are producing excess distillate for resale. This will have an adverse effect on any processor that does not have an associated cultivation facility that produces biomass for extraction.
RECOMMENDATION:	Allow for the intake of caregiver concentrate for infused product production and caregiver RSO for medical. Allow for the ability to transfer 100% of medical flower to adult-use if it passes all testing requirements.

Background checks (to R 420.602)	
CONSIDERATION:	In order to create and expand upon the existing employment opportunities for residents of Michigan in the industry we would propose making the background check process more efficient.
RECOMMENDATION:	Begin tracking individual background checks and issue permits based on their status vs. forcing background checks for every job they apply for or are hired to do, within the cannabis industry. This could possibly be done through METRC in order to build efficiencies into the system.

The requirement to weigh individual plants as they are removed from the field of outdoor grows.	
CONSIDERATION:	Presently we need to weigh each individual plant as it's removed from the field, which is tedious and time-consuming.
RECOMMENDATION:	Allow outdoor grow operators to weigh removed plants in bulk to improve efficiency while maintaining the accuracy of data. Delete this requirement.

Warmest regards,

Roma

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Thomas Jay Weichel
Prosecuting Attorney

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February 17,2020

Director Andrew Brisbo
Marihuana Regulatory Agency
P.O. Box 30105
Lansing, MI. 48909

RE: Marihuana Delivery Business

Dear Director,

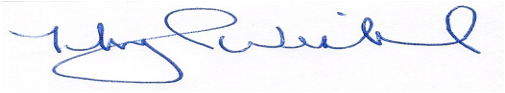
I have had the opportunity to review the proposed Marijuana Delivery Business License. I can advise for a myriad of reasons, I strenuously oppose this type of license, especially at the early stages of implementation of the MRTMA for multiple safety reasons. The "Marijuana Black Market" from manufacturing to delivery is already at dangerous levels. Several months ago a local resident (17 year old child) is caught in Shiawassee County with four pounds of Marijuana, multiple THC vaping cartridges scales, baggies and yes a handgun. Within a week he is caught in Alcona County with 7.2 ounces, plastic baggies, scales, and over 70 THC cartridges used for vaping and THC wax.

These types of events are occurring all over the state creating large tax diversions and multiple public safety issues. As I am sure you are aware, the MRTMA, inherently created a "black market surplus" when it allowed individuals to grow and legally possess up to 12 pants. With a conservative estimate of a 10 pound yield for those 12 plants, this equates to 9000 marijuana cigarettes. This 10 pound yield is not going to be sitting in locked closets or container. It heads directly into the stream of commerce and into the hands of our children.

I can advise the proposed Joint Permanent Rules for the licensed cannabis industry has multiple unintended public safety consequences that include delivery of unsafe product, diversion from retail busness, free lancing (black market drivers), tax diversion and no local control just to name a few.

I find you in the unenviable position of trying to limit illegal marijuana entering the stream of commerce and in that same breath trying to protect our communities. Please help keep our communities safe by removing this proposed license until its serious adverse effects on our youth, health, safety and welfare of Michigan's communities and cannabis consumers are addressed.

Respectfully yours,



Alcona County Prosecuting Attorney

GREAT LAKES
CANNABIS
CHAMBER
OF COMMERCE

Marijuana Regulatory Agency
Legal Section
P.O. Box 30205
Lansing, MI 48909

RE: Proposed Marijuana Rule Set

On behalf of our members, the Great Lakes Cannabis Chamber of Commerce appreciates the opportunity to share comments regarding the proposed marijuana rules. The GLCCOC represents licensed operators in Michigan's cannabis industry. We support any and all changes to make the operation of business in the Medical and Adult Use industries consistent. Any deviation between these two industries creates confusion and is a risk to public health to safety.

Although we recognize that the proposed rules would be step in the right direction for consistency between the Medical and Adult Use industries, we share the concerns voiced by many others in regard to the proposed rules:

- **Labor Peace Agreements.** As our testimony in support of Senate Concurrent Resolution (SCR) 18 indicates we find this requirement to be unlawful as burdensome to the licensees.

- **Home Delivery Requirements.** We support the requirement that a delivery service must be affiliated with a licensed provisioning center in order to operate in Michigan. Failure to require this creates a lack of control regarding integrity on the part of the licensee. It also creates chain of custody errors and the potential for unqualified individuals to involve themselves in the market. This requirement also helps local government and law enforcement know who is impacted by a licensed business.

- **Testing Batch Sizes.** In the interest of public safety, we support implementing sampling requirements as written in the current Medical rules. The proposed rule set does not take certain factors, such batch weight, into account. This creates variation between test results and the potential for bad actors to attempt to manipulate the system to move unsafe product to the market. Unless a scale based on batch weight and sample size taken is implemented, the standards found in the current Medical rules must stay in effect. Members have also voiced concerns regarding which substances are tested.

- **Container Transportation.** Michigan statute currently requires that medical product be transported in a secured and sealed container. However, the terms "secured" and "sealed"

have never been defined in statute or rule. The improper transportation of product can lead to mold and other issues showing up on the plants, which is hazardous for consumers. The proposed adult use rules have no requirements regarding sealing or securing containers. With discussions ongoing with regards to failed testing and the ultimate disposition of failed product, proper transportation and storage while awaiting testing/processing is necessary.

- **Department Collaboration.** We suggest the formation of a task force or council to help facilitate collaboration and communication regarding the various areas of overlap that LARA and other departments have in regard to this industry. For example, there are certain food and drug issues that are found under DHHS that could be useful here. Allowing their expertise to be utilized will help in protecting consumers.

We appreciate the time and effort devoted by the department to not only developing but hearing feedback on these proposed rules. We believe that it is in the best interests of public health and safety, the emerging industry, and the State of Michigan to make sure that rule sets are consistent and the industry concerns highlighted here are addressed. The GLCCOC looks forward to continuing a positive working relationship with the department and is happy to meet with Marijuana Regulatory Agency representatives to discuss our concerns more thoroughly.

Thank you,

Sandra McCormick
Communications and Membership Director
Great Lakes Cannabis Chamber of Commerce
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(517) 420.5417

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February 17, 2020

Re: MRA License Proposal – Delivery/Distribution Business License for Marihuana

To Whom It May Concern:

Please consider this letter an indication of the complete and wholehearted opposition of myself and my Office to the Marihuana Regulatory Agency's proposal for a Delivery/Distribution Business License for Marihuana.

Our Office adopts the concerns articulated by Mr. Chuck Perricone, Former Speaker of the Michigan House, in this regard.

This proposed Delivery Business License creates significant and unnecessary public safety issues, facilitates Black Market exploitation, adversely impacts licensed retail businesses, diminishes Municipal control and is unlikely to accomplish its purported objectives.

The Health, Safety and Welfare of Michigan's citizens, including our youth populous, will be better served by future decisions made after clear and thoughtful deliberation.

Sincerely,

Mark E. Reene
Prosecuting Attorney
County of Tuscola

Past President
Prosecuting Attorneys Association of Michigan

UFCW951
United Food and Commercial
Workers International Union

February 17, 2020

Andrew Brisbo
Director
Marijuana Regulatory Agency
Legal Section
P.O. Box 30205
Lansing, MI 48909

Dear Director Brisbo,

On behalf of the 28,000 members of UFCW Local 951, I write in support of the Michigan Marijuana Regulatory Agency, Department of Licensing and Regulatory Affairs Marihuana Licenses regulations with a few technical corrections. I believe that the labor peace language in the regulations support the goals of the Michigan Regulation and Taxation of Marihuana Act (MRTMA) which are to create a cannabis industry that provides consumers with a safe product and allow revenues from the industry to go to improve communities and public revenues.

UFCW 951 members work in grocery retail, health care and meat processing across the state. Nationally, UFCW represents over 1.3 million hard-working men and women. Our members work in highly regulated industries including the emerging legal cannabis industry. These members can be found across multiple states in growing and cultivating facilities, manufacturing and processing facilities, and in laboratories and dispensaries.

Wherever cannabis is legalized, the UFCW is committed to building family sustaining jobs and a strong, diverse and skilled workforce. As a Michigan resident and a labor leader I support a recreational cannabis industry in Michigan that will create sustainable jobs for families for the foreseeable future. My experience is that labor peace agreements are an effective way to achieve that. Labor peace agreements protect business, workers and consumers, and are an effective regulatory tool for the state.

Access to representation helps ensure that a broad range of workers can benefit from the fledgling industry, especially workers from communities that have been disproportionately impacted by cannabis prohibition in the past. A labor peace provision will support all these objectives and is an important tool for this booming new industry.

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The creation of a new legal Michigan marijuana industry is an opportunity to build fairness into the industry and address the historical and ongoing harms of cannabis prohibition. This new industry is a chance for workers to exercise workplace democracy to improve both the industry and Michigan communities. One strong mechanism to do so is the labor peace agreements.

UFCW strongly supports the draft rules published on November 7, 2019, especially the labor peace agreement requirement. We offer the following technical corrections for your consideration.

1. Rule 420.6 (2): To fully protect the workforce, labor peace agreements should be required for license renewal applications and new applications. Suggested language, "An applicant is ineligible to receive a state license, whether initial or renewal, if any of the following circumstances exist"
2. Rule 420.6 (3): Add renewal here as well. Suggested language, "In determining whether to grant or renew a state license to an applicant, the agency may also consider all of the following"
3. Rule 420.13 (e): The labor peace agreement attestation should be signed by the bona fide labor union, not the company. We also suggest that copies of the labor peace agreement be kept on file and made available upon request. Suggested language, "The applicant shall attest, on a form provided by the agency and signed by a bona fide labor organization, that the applicant has entered into a labor peace agreement and will abide by the terms of the agreement. Copies of the labor peace agreements must be maintained and made available to the agency upon request."
4. Rule 420.27: Insert labor peace requirement here to make clear that a marihuana delivery business license is required to have a labor peace agreement like other license categories. The delivery business license is essentially a courier, which delivers from licensed retailers or microbusiness to customers. Our preferred policy solution is to have delivery licenses tied to a physical brick and mortar retail site instead of being a standalone delivery company.
5. Rule 420.20: Make clear that all special licenses are required to have a labor peace agreement. This may be less important for the temporary licenses but should apply to the establishment licenses such as consumption loungers and delivery.

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UFCW 951
United Food and Commercial
Workers International Union

Labor peace agreements help ensure the jobs in this industry will include family-sustaining wages; health and safety for the workers and the product; and diversity. Workers with access to representation are more likely to receive safety and technical training that reduces workplace accidents and improves product quality. Labor peace agreements will reward responsible businesses and ensure that Michigan's cannabis industry is driven by companies committed to making long-term investments in local communities all over the state.

Thank you for the opportunity to comment.

Sincerely,

John Cakmakci
President
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MICHIGAN CANNABIS MANUFACTURERS ASSOCIATION
DUAL RULE COMMENTS
(Feb. 2020)

SET #1 LICENSES

- **Definition of "Same Location" (R 420.1(1)(ai); R 420.203(2)(a))**: The continued inclusion of a "partition" as the minimum standard of division for more than one license operating at the same location is appreciated. Further direction from the Enforcement Division on the minimum requirements of a "partition" would be helpful. Doing so would standardize this issue and avoid subjectivity on the part of operators and field inspectors.

- **Typo (R 420.4(1))**: Seems like the word "either" is a mistake.

- **Disclosure of Persons "Controlled" by a Person who Controls the Applicant (R 420.4(2)(iv)(B))**: Among other things, the MMFLA conditions suitability for licensure upon the "integrity, moral character, and reputation" of any person who "[i]s controlled . . . by a person who controls, directly or indirectly, the applicant." MCL 333.27402(3)(a)(ii). The MRTMA does not contain a similarly detailed provision, but instead merely entrusts the MRA to "promulgat[e] rules . . . that are necessary to implement, administer, and enforce [the MRTMA]," and to "grant[] or deny[] each application for licensure . . . ." MCL 333.27957 (1)(a-b). Based upon these provisions, proposed Rule 420.4(2)(iv)(B)) requires the disclosure "any other person who . . . [i]s controlled, directly or indirectly, by . . . a person who controls, directly or indirectly, the applicant." This has been confusing and cumbersome since the inception of the MMFLA application process. The requirement is difficult to understand and, taken to its furthest extreme, creates an endless string of attenuated control relationships. Propose doing away with the requirement via legislative amendment to the MMFLA and by extension, the Proposed Dual Rules, so as to avoid (i) unnecessary expenditure of attention and resources on the part of the MRA, and (ii) unintentional non-disclosures by applicants. [*REQUIRES STATUTORY AMENDMENT*]

- **60 Day Inspection Window & Need for Preliminary Plan Approval (R 420.4(13))**: It is understood that this 60 day window is necessary to comply with the 90 day application review period required by the MRTMA. (MCL 333.27959(1)). However, only being able to access MRA field inspectors after a Step II application is filed, which itself requires substantial completion of an establishment build-out by virtue of this limited timeline, creates great risk for prospective operators. It is suggested that MRA develop an interim, consistent process for prospective licensees to get preliminary site plan approval before filing a Step II, and before assuming the expense of the establishment build-out, to lessen the risk otherwise borne by those prospective operators.

- **Adjusting the NOD Correction Window to "Business Days" Excluding Holidays (R 420.5(4-5))**: While the reasons for this limitation are fully understood, often, correction of NODs will involve the input of third-party professionals (architects, CPAs, lawyers, etc.), and depending upon the timing of same, weekends and holidays can place unnecessary strain on an application who is attempting to comply and address NODs in good faith. It is suggestion that the language of this rule should be modified to operate upon "business days," and to exclude national holidays, thus ensuring that applicants do not fall victim to timing circumstances outside of their control.

- **Express Cure Right for Renewal NODs (R 420.13)**: Suggest adding an express NOD cure right for renewal applications in line with the above comment re: NOD Correction Window for lead applications. This is already being done in practice, but is not expressly set forth in the rules.

- **Reporting New Civil Lawsuits (R 420.14(5))**: In the MMFLA Rules, a licensee needs to update the MRA when it is the subject of a new civil judgment. The Dual Rules have expanded that reporting requirement for "new . . . lawsuits" that are civil in nature. This is problematic, as it creates an incentive for non-licensed contracting parties to leverage the litigation threat against a licensee whether or not the actual claims are meritorious. That new requirement should be removed or carved out for non-criminal, non-regulatory actions. Only when a judgment is obtained should the matter need to be reported. If a case is settled, the MRA does not need to be informed at all – as its just business at that point.

- **Delivery Business (R 420.20(1)(e); R 420.27)**: Suggest removing as the service is not needed in light of home delivery allowed by licensed Provisioning Centers and Retailers. Also, maintaining delivered sales within the seed-to-sale tracking system seems untenable as it is unclear who is obligated to "record[] [confirmed sales] in the statewide monitoring system." (R 420.27(11)(d)). These license types are not allowed to "sell" the products (R 420.27(11)(f), as they are only allowed to take "physical," rather than "legal" custody of the marihuana or money (R 420.27(8)), and yet deliveries must be recorded after being made in compliance with applicable regulations (R 420.27(11(d)), including verifying age and other delivery requirements (R 420.27(11(e)), and in instances when delivery business employees are unable to do so, or in certain other cases, these license types must return the products to the marihuana retailer (R 420.27(11(g)). This requires a great deal of interaction and follow up with the retailer. Since the delivery business employee is not an employee of the retailer, limited access area restrictions and visitor log concerns come into play, further complicating the situation for no apparent reason. Given the amount of oversight and logistics required (R 420.27(12)), it is unlikely that this license type will be viable for small business scales, so it will not further the MRA's social equity initiatives in any meaningful way. As such, it is an added complication without a reason. Alternatively, these licensees should be required to obtain local approval to increase the controls placed upon this new license type.

Set #2 LICENSEES

- **Only Female Flowering Plants Count in AU (R 420.102(2))**: It is suggested that greater consideration be given to this standard before formalization. While it is not immediately objectionable on its face, the long-term market implications of the loosened standard, coupled with the possibility for abuse by bad actors, should be carefully considered by cultivation and operations experts to ensure the immediate apparent benefits of the altered standard are not outweighed by longer-term negative implications.

- **Sale of Seeds, Seedlings, Tissue culture Authorized and No Secured Transporter Needed. (R 420.102(3, 9))**: A good development in the rules. This entire subject matter was very unclear in previous renditions of the medical and AU rules.

- **Transfer of Inventory Between Commonly Owned MRTMA Processors (R 420.103(3))**: Very important and necessary development in the rules. Note, the MMFLA processor rule (R 420.109) does not include a similar allowance. Why not? Can it?

- **Transfer of Inventory Between Commonly Owned MRTMA Retailers (R 420.104(4))**: Also a good development. Query: If the amount of product to be transferred is under the limits for home delivery carriers, can this sort of a transfer be accomplished without use of a secured transporter, similar to the rule to transport to temporary events noted above? As presently written, these rules would indicate that the answer is "no." Note, the MMFLA provisioning center rule (R 420.111) does not include a similar allowance. Why not? Can it?

- **Standards for Heavy Metals are Prohibitively High and Should Established through the Scientific Process (R 420.107(3); R 420.206(12))**: There have been reports that the maximum levels for heavy metals established in October are causing hundreds of pounds of flower to only be usable in oils, further contributing to the current shortage. There needs to be a 6 month+ runway for licensed cultivators to meet these standards, so that a root cause analysis can be performed on operating facilities/establishments to determine the source of these heavy metals (water, soil, etc.). Also, established standards should be the product of an evaluation by a science-based panel of impartial experts. The delayed implementation of the current testing requirements for copper and nickel announced on Feb. 5, 2020, is appreciated, but it will only delay the negative repercussions of the present standards, rather than alleviating them.

Set #3 OPERATIONS

- **RFID Cards and Logs for Facilities/Establishments (R 420.203(e); R 420.209(4-5))**: This could be a mandatory requirement under the referenced rules. Alternatively, if deemed to be cost-prohibitive as a mandatory requirement, the MRA should make the installation and operation of a facility/establishment-wide RFID Access Card and Log system a mandatory requirement of GMP/GACP certification as set forth in later rule sets. Doing so will improve safety and recordkeeping functions, among other indirect benefits.

- **Access to Licensee Records (R 420.203(2)(f))**: Right now, the rule says licensee "records," presumably meaning, records of any sort, must be available to the Agency "upon request," which Enforcement has previously clarified means "immediately upon request" in the context of the prior MMFLA Rules. Given that many vertically integrated operators will have a corporate headquarters and various access limitations/security protocols on certain sorts of "records," this rule needs to clarify which records must be immediately accessible to the Agency, and/or provide a 24 hour request window to ensure operators can always comply with such requests.

- **Compliance with Natural Resources and Environmental Protection Act (R 420.203(3)(a))**: This is an expansion of the prior MMFLA Rule's obligation, which was limited to compliance in the context of "waste disposal." The implications of this expanded requirement could be substantial, and the MRA should give operators a 1 year running start at this, similar to the Dual Rule's requirement that a safety compliance facility be "accredited" within a year of assuming operations (R 420.107(2); R 420.305(1)(a)).

- **No Distinction of Separation for Equivalent Licenses (R 420.205(5))**: This is a great rule, and exactly what should be done.

- **Structure of Rule 6 in Set #3 (R 420.206)**: This rule spans nearly three pages, and contains various operating requirements, some applicable to all classifications of licenses, and some specific to certain licenses. There are no sub-titles in the rule and the placement of various sub-parts appears somewhat random. Recommend breaking this into separate rules per facility classification for ease of understanding and use.

- **Incorporation of Good Agricultural Collection Practices for Cultivators (R 420.206(2); R 420.212(5); R 420.301(i); R 420.305(4); R 420.602(2)(h))**: Current rules incentivize growers to obtain GMP certification. This is ideal, but GMP does not, by its nature, operate upon the "cultivation" of plant products in a meaningful way. To truly achieve the intended result here – standardized, repeatable cultivation practices with consistent, safe results – growers must meet Good Agricultural Collection Practices ("GACP"). For instance, the definition of "Good manufacturing processes" in Set #4 is limited to "manufacturing processes and facilities," and "manufactured" products. The equivalent "cultivation" standards need to be incorporated into these rules. Properly incorporating GACP standards into cultivation operations requirements will help the State of Michigan effectively compete in the interstate commerce post-Federal decriminalization. Potential particulars include: (i) Inclusion of a GMP/GACP Plan requirement that can (ii) serve as a basis for MRA benchmark inspections tied to the license renewal process or, perhaps, more frequently. The specific incentives provided for achieving certification include no testing and/or increased batch sizes. See above discussion re: "Plant Counts" and below discussion re: "Harvest Batches." In the future, depending on development of the matured market, this could be changed to require a cultivator achieve GACP certification within two years of initial licensure, and GMP/GACP Plans could become mandatory Step-II submissions.

- **General Incorporation of GMP for Manufacturing, Packaging and Food (R 420.206(10))**: This is a great rule, and was part of the prior MMFLA Rules. The question now is how this standard will be enforced? It only matters if it is policed properly.

- **Forced Sharing Rule (R 420.206(16))**: This rule does not appear to be expressly authorized by the MRTMA, and does not efficiently serve its own stated purpose, which itself may turn out to be a non-issue as the recreational market assumes its final form. Moreover, regardless of the rule's foundation, necessity or effectiveness, the Forced Sharing Rule as presently drafted is susceptible to Constitutional challenge because it does not provide an objective standard of compliance or enforcement.

- **Home Delivery as it Relates to Consumption Lounges (R 420.207)**: Certain provisions here, specifically subsection 7(c-d, h, l), contemplate use of a motor vehicle for deliveries. However, the most ideal situation is one where a Retailer is located directly next to a Consumption Lounge so that real-time delivery on foot is possible. While there is nothing in this rule that expressly disallows such that scenario, greater clarity on that point, and perhaps a relaxed list of requirements for such a process, would be ideal.

- **Mandatory Installation of Backup Generator Power System (R 420.209)**: The MRA should consider making the installation and operation of a backup generator/power system a mandatory requirement under the rules. Alternatively, if deemed to be cost-prohibitive as a mandatory requirement, the MRA should make the installation and operation of a backup generator a mandatory requirement of GMP/GACP certification as discussed elsewhere in the rule sets. Doing

so will improve safety and security and avoid product losses that will impact the market and pricing, among other indirect benefits.

- **Other Composting/Feedstock Disposal Methods (R 420.211(13))**: This is a good rule and allows operators to come up with more efficient ways to reuse/repurpose cannabis waste in the future.

- **Common Ownership MM to AU Transfers (R 420.214)**: It is suggested that the inverse of this process be permanently allowed in the rules. As the market matures, recreational marijuana and marijuana product generation will be the primary focus of cultivators and processors, and allowing the transfer of AU products to the MM market, as needed, will ensure ample supply for the MM market without requiring those operators to dedicate floor space and resources to MM licenses that may be better utilized for AU operations.

Set #4 SAMPLING AND TESTING

- **No Limits on Harvest Batches (R 420.301(j); R 420.304(2)(b))**: There no longer appears to be an express limitation on the size of a "harvest batch." Prior MMFLA Rules (R 333.248(2)(b)) and the Emergency MRTMA Rules (R 42(2)(b)) were limited to 15 pounds. Now the issue seems to be limited to the dictates of the definition of "batch," meaning "same variety that has been processed together and exposed to substantially similar conditions." (R 420.301(1)(e)). While this is an ideal situation for operators from a COGs standpoint, it should be offered as an incentive for GMP/GACP certification rather than being the general standard. Doing so will incentivize such certification, strike a balance between safety and efficiency, and quell work-flow concerns from the Safety Compliance operators.

- **Skipping Testing for Plant Material Converted into Live Resin or Concentrate (R 420.303(6))**: In the Emergency MRTMA Rules (R 41(6)), the ability to skip testing until after the finished product was produced was limited to 60 pound batches for live resin. Now, the same can be done for "concentrates, with agency approval," and there are no express weight limits. This seems to be a good rule, but would be interested in knowing more about what will be required to receive "agency approval." Note, "concentrate" is not defined in this rule set. "Concentrate" is also not defined in the MMFLA, but it is included under the MRTMA definition of "Marihuana" (MCL 333.27953(e)), and has its own definition there as well (MCL 333.27953(g)). Accordingly, a defined term for "concentrate" in this rule set would be useful. The rule also says that the Agency may publish "guidelines" in this regard.

- **Allowance for Transfer of Remediation Product (R 420.306(4))**: Quarantined product must be able to be transferred between processors for remediation purposes, as there will be certain remediation methods that only some processors will have equipment to perform. As it currently stands, this is not considered or enabled under the rules and guidance published to date.

Set #5 MARIHUANA-INFUSED PRODUCTS AND EDIBLE MARIHUANA PRODUCT

- **Reference to "Address" on Infused Product Labels (R 420.403(7)(a)**: Infused products must be labeled with the "address" of the marihuana business that processes or packages the product. This notation of an address is not a part of the general labeling requirements for marihuana itself. (R 420.504). Given that fact, coupled with the amount of other information that must be included

on labels and the safety concerns brought about by noting the facility/establishment's address on packaging, it is suggested that this requirement be omitted. If patrons want to find a facility/establishment's address, they can look up the license number on the MRA website.

Set #6 MARIHUANA SALE OR TRANSFER

- **Different Warnings for MM and AU Products (R 420.504(k))**: Currently, there are different warnings required for MMFLA and MRTMA products. This requires the generation and application of different labels for the different products, which will otherwise be identical. Enforcement has previously instructed that, under the current rules, operators cannot combined the warnings ("For use only by registered qualifying patients or individuals 21 years of age or older") to streamline the labeling process. This should be reconsidered in the Dual Rules.

- **Prohibits Health Claims in Marketing (R 420.507(3))**: This is a new marketing limitation, which runs head first into the concept of "medical marijuana" itself, as embodied by the MMMA and MMFLA. In fact, as the MRA is well aware, there is a LARA/Medical Marihuana Review Panel made up of experts who are responsible for approving debilitating conditions for which a patient might be eligible under the MMMA. Yet, the FDA is not supporting any cannabis-based health claims right now, so any such marketing statements will constitute regulatory violations. Further clarity on what constitutes a health claim ("wellness," "holistic," "calming," "pain management," etc.) should be provided by the Agency to avoid inconsistent compliance and enforcement efforts.

- **What Does it Mean to Advertise a "Marihuana Product?" (R 420.507(4, 6-9))**: There have already been several instances where the Agency, and an operator, disagreed as to whether or not the latter was advertising its brand generally, or advertising a "marijuana product" within the context of the limitations on public advertisements. The Agency should provide further guidance here, or disputes will continue to arise. Also worthy of note, in both the Emergency MRTMA Rules and here, the following prior limitation in the MMFLA Rules has been removed: "A licensee shall not advertise a marihuana product where the advertisement is visible to members of the public from any street, sidewalk, park, or other public place." (R 333.276(3)). This change is appreciated as that prior restriction was overly restrictive in many respects.

- **Trade Samples (R 420.508)**: This rule is identical to the one in the Emergency MRTMA Rules, but for the following provision, which has been deleted: "Except for a licensed designated consumption establishment, the samples may not be consumed or used on the premises of a licensed marihuana establishment." (R 53(3)). This is a good rule change.

- **Allowance of Internal Product Samples (R 420.501(1)(j); R 420.509)**: This was not allowed in the MMFLA Rules, and seems like a welcomed accommodation for testing new products. Note, the "results of internal product sampling" must be documented and kept on hand. Does this mean a survey of employees' impressions of the products? Also, the Trade Samples rule clarifies that those samples need to be tested and entered into METRC. This rule does not have similar language, so clarification on testing and recordation requirements for Product Samples under this rule would be helpful. Also, what is the difference between a Trade Sample and an Internal Product Sample for a Sales Location? Provisioning Centers and Retailers do not generate products, so they would either be given trade samples by up-stream operators, or purchase products and then circulate to their employees as Internal Product Samples before stocking on the sales shelf? Seems odd. More clarity should be provided on these issues.

- **Product Development Allotment (R 420.510)**: Per sub-2, up to 50 plants do not count toward the operators total plant count, which is great. R&D testing is allowed, as further explained in R 420.307. Generally, this is a good rule addition. These products to employees for market research, and can sell those products to a Sales Location, assuming they passed testing. The rule also allows operators to participate in research studies with prior Agency approval which is appreciated.

Set #7 EMPLOYEES

- **Operations Plan Requirement in Employee Training Manual (R 420.602(e))**: This is a new requirement not previously included in the MMFLA Rules. Must address policies to avoid over-intoxication, underage access, illegal sales and other potential criminal activity. The MRA should provide an initial 6 month runway to generate these Manuals to ensure they are based in operational fact rather than hypothetical speculation.

- **21+ for Dual Employees (R 420.602(2)(j)**: Because equivalent licensed operators have to comply with this limitation from the MRTMA, it basically makes it impossible to employ persons between the ages of 18 and 21, unless the operator is running a strictly MM facility. This is unfortunate, especially with regard to contractors and student interns. But, since the 21+ requirement is a part of the MRTMA itself, a statutory changes is required. [*REQUIRES STATUTORY AMENDMENT*]

- **Criminal History for Dual Employees under MMFLA/MRTMA (R 420.602(2)(k))**: Since nearly all Sales Locations will have "equivalent licenses" for MM and AU, the more restrictive prohibitions in the MMFLA ("past 10 years for a controlled substance-related felony," R 333.27405) will always apply, and the social equity initiatives of the MRTMA (disqualifying offenses limited to distribution of a controlled substance to a minor, R 56(2)(b)) will be thwarted. Under this bulletin, the Agency must provide prior approval if an operator under the MMFLA wishes to hire, or continue to employ, a person with a disqualifying offense, so it is possible that the Agency could alleviate the conflict between the hiring limitations in this way, but it would be preferable to align the two standards via amendment of the most restrictive MMFLA standard. [*REQUIRES STATUTORY AMENDMENT*]

Set #9 DISCIPLINARY PROCEEDINGS

- **Advanced Reporting re: Labor Peace Agreements (R 420.802(3)(h))**: Changes to Labor Peace Agreements must be reported in advance, which is odd if one assumes that, in most cases, changes will come due to unexpected breakdowns in renewal negotiations. This should be addressed in the context of the grander discussion on these Labor Peace Agreements generally.

- **Reporting New Civil Lawsuits (R 420.802(5))**: As mentioned in the comments to Set # 1 regarding "Reporting New Civil Lawsuits," having to report the initiation of any civil case is inadvisable for a number of reasons.

MICHIGAN ASSOCIATION OF CHIEFS OF POLICE
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February 18, 2020

Department of Licensing and Regulatory Affairs
Marijuana Regulatory Agency
Licensing Division
P.O. Box 30205
Lansing, MI 48909

RE: Proposed Marijuana Business License Proposal

To Whom it May Concern,

The Michigan Association of Chiefs of Police has just become aware of the proposal that would create a "Marijuana Delivery Business".

While well-intentioned, this license is fraught with unintended public safety consequences too numerous and complex to be addressed in this letter. Until the State has fully addressed the potential serious adverse effects these licenses could have on our youth, and the health, safety and welfare of Michigan's communities and cannabis consumers. We strongly urge the removal of this proposed license type at this time.

The Michigan Association of Chiefs of Police would welcome the opportunity to discuss our public safety concerns regarding the Marijuana Delivery Business proposal.

Very Truly Yours,

Robert Stevenson

Robert Stevenson, Executive Director
Michigan Association of Chiefs of Police

February 18, 2020

Department of Licensing and Regulatory Affairs
Legal Section
Bureau of Medical Marihuana Regulation
P.O. Box 30205
Lansing, MI 48909

Thank you for your diligent work on cannabis policy development and particularly for your thoughtful consideration of public comment with the goal of improving clarity and adopting regulations that are fair to the cannabis industry, while protecting public health and safety.

Founded in 2008, Weedmaps is the oldest and largest cannabis technology company in the world, serving as the leading innovator in developing software and platforms that drive and support the cannabis industry. Our core platform, weedmaps.com, connects consumers and patients with local cannabis dispensaries, delivery services, doctors, deals, brands, laboratory data, and real-time menus. Weedmaps' full suite of business-to-business and business-to-consumer software directly integrates with laboratories to collect public health data, dispensaries' point-of-sale systems to provide product availability, and medical practice management services in order to support certifying clinicians, supporting and promoting a consumer-focused and transparent marketplace.

Beyond providing the technology solutions that underpin the cannabis industry over the last ten years, Weedmaps has also advocated for measured growth and responsible policy in order to guide the modernization of the industry. Weedmaps is working collaboratively with all levels of government across the United States to provide policy assistance to encourage sensible reforms and regulatory frameworks that will ensure reliable access to cannabis while maintaining critical public health and safety protections.

We are excited to offer our opinions prior to the adoption and implementation of these rules.

1. **Comprehensive Cannabis Delivery Program**

In order to create a robust and mature cannabis market, it is imperative that the State of Michigan implements a comprehensive cannabis delivery program. Licensing delivery of cannabis and cannabis products links both medical and adult-use consumers with safe, convenient and reliable access to legal cannabis retailers and benefits both densely-populated and rural areas. Permitting delivery operators to gain licensure is also a less challenging method of providing consumers with sufficient retail access while reducing illegal market activity.

Cannabis delivery businesses are adept at serving consumers and reducing illegal market activity in urban, suburban and rural areas. For example, many medical and adult-use patients in rural communities do not live close to a city or town where a storefront may exist. Without a convenient legal alternative, including being able to order online, these consumers will rely on incumbent illegal providers for access. Licensing delivery in rural areas offers these consumers a safe, legal alternative.

In urban and even suburban communities, consumers and legal retailers are separated by time more than they are by distance. These jurisdictions have higher population densities, which contributes to traffic congestion and increases the length of time required to access what often amounts to a very limited number of cannabis retail storefronts. Similar to their rural counterparts, urban and suburban cannabis consumers will also continue to engage incumbent illegal retailers where access to legal providers is inconvenient. Expanding the number of retail access points available to consumers has proven to be an effective strategy in dissuading them from returning to illegal market providers, and delivery offers a creative approach to extending sufficient access.

Independent delivery services provide an attractive offset to traditional storefront retail when it comes to establishing licensed retail in communities. For example, while local governments often artificially limit the number of legal retail locations available to consumers, this approach frequently fuels illegal market providers who can undercut licensed operators on price, product diversity and can access consumers 24-hours/day. This is particularly true in jurisdictions that already had a large volume of incumbent cannabis businesses prior to the organization of a licensing model. Augmenting storefronts with delivery service providers enhances consumer access by expanding the pool of retailers available to consumers, and offer tremendous flexibility in which consumers can secure legal access.

No matter the state, county or city, a successful approach to legal cannabis retail should integrate delivery to satisfy the needs and preferences of medical and adult-use consumers, and combat illegal market forces.

2. Advertising

The cannabis industry is unique in that a robust illicit market has persisted for nearly a century; therefore, lawmakers and licensed cannabis operators face the challenge of convincing consumers to switch to the legal market. Research shows that the vast majority of consumers prefer legal cannabis, however, restricting legal operators from advertising their business is a guaranteed way to ensure that consumers will continue to patronize the illicit market. Digital platforms that provide product and pricing information promote competition in an otherwise non competitive market facing restrictive licensing caps and limited retail access. Such competition will control prevailing market prices within the regulated market and thus shift a larger share of cannabis consumers from the illicit market to the regulated industry.

Jurisdictions aiming to combat the illicit cannabis market by implementing overly-restrictive advertising policies are misguided and likely doing more harm than good. The best way to diminish the illicit market through advertising policy is to ensure that legal operators are able to effectively establish brand recognition and advertise their products. Advertising policies should ensure that, at a minimum, licensees are permitted to include information on pricing, available products, reasonable promotions, hours of operation, and other information that is relevant to consumer purchasing decisions.

There is a way to properly structure the cannabis market so that it both promotes business growth and protects public safety. Simple policies can be implemented to mitigate public safety risks and prevent youth audiences from being exposed to cannabis-related advertisements. First, cannabis advertisements

should not feature individuals under the age of 21, nor should they intentionally appeal to children in any manner. Requiring that all cannabis advertisements are targeted to adults 21 and older will help ensure that children are not exposed to unnecessary risks or content that encourages youth usage. Another policy that will protect public health is explicitly prohibiting cannabis companies from using false or misleading claims regarding the health benefits of their products. Preserving public health is a primary concern for many lawmakers, and prohibiting misinformation in advertisements is a way to protect consumers from engaging in potentially harmful activities under the guise of health.

An informed cannabis consumer base is in the best interest of regulators and lawmakers who wish to protect public health and safety. Cannabis products are diverse and oftentimes complex, so branding and advertising play an important role in educating consumers. A Deloitte study on the Canadian cannabis market found that 66% of consumers cited safety as their most important consideration when buying edibles. If licensed retailers are allowed to advertise their products along with information on laboratory testing, dosage recommendations, and potency, cannabis consumers will be able to identify brands they trust. A major advantage of the legal market is the ability to foster consumer trust by providing consistent, reliable products. Because illicit market products are often inconsistent and not required to undergo any laboratory testing, consumers are more likely to opt for trustworthy legal market products that they recognize. Enabling cannabis businesses to advertise their products will aid in shifting consumption from the illicit market to the legal market, thus creating a safer cannabis marketplace altogether.

3. Social Equity

While we applaud the department's efforts in mandating a plan that will help encourage industry participation from communities disproportionately impacted by cannabis prohibition, we encourage the department to study and review how other states and municipalities have dealt with equity in cannabis. The department should review the overall barriers to entry when it comes to entering the legal market. Not only should the department develop ways for smaller businesses to enter the legal market, it should be mindful of how to make sure equity applicants can thrive in the industry after receiving a license. While access to capital is an issue the entire cannabis industry has, this issue is even more pronounced for equity applicants. Operating costs, regulatory overhead and a slow roll out could have unintended consequences on these new businesses. Overall, prohibition has proven to have rippling effects in disproportionately impacted communities and a thoughtful social equity initiative that pairs programming and education with resources will help to mitigate the unintended effects seen in other jurisdictions throughout the nation..

In closing, Weedmaps wants to emphasize our organization’s strong commitment to ensuring that Michigan stands up a responsible and reliable program to best serve patients and consumers. We want to continue to serve as a resource to you and hope to continue this important dialogue.

Thank you,

Reed Sullivan
Government Relations
Weedmaps

POLLICELLA TOMPKINS, PLLC

COMMENTS TO PROPOSED JOINT PERMANENT RULES FOR MEDICAL AND RECREATIONAL ADULT USE MARIJUANA FACILITIES

Delivery Business License

We oppose the addition of the Delivery Business License on numerous grounds:

Problems:

1. The Delivery Business License will be an unmanageable and unenforceable vehicle for the black market marijuana trade. There is no amount of verification, compliance or enforcement that can prevent, among other things, home delivery to minors, diversion, operation out of residential areas, and counterfeit and unsafe products being sold to unwitting consumers. It is not the answer to the social equity owner problem. The only successful cannabis delivery business is an App created by a California billionaire, which will create a lot of pizza-cannabis-fast food delivery drivers, not business owners.

Proposed Solution:

Do not adopt this rule.

Warnings, Citations, and Formal Complaints

Section: Disciplinary Proceedings, Rule 420.807-809

Problems:

1. There is no distinction between when a warning is issued and when a citation is issued. The rules use identical language for both.

There is no distinction between when a "warning" is issued and when a "citation" is issued with the way the rules are drafted right now. This is significant because a warning does not have a fine associated with it, is not made available to the public, and remains in the licensee's file for only 1 year, whereas a citation, as it is written now (which is quite different from how citations have been issued over the past year) has a fine associated with it, is made available to the public, and remains in the licensee's file for 5 years.

2. Citations can no longer be negotiated or settled. If they are not accepted, they will become a formal complaint.

It appears that the ability to negotiate citations has been removed from the rules. Under the proposed rules, if a licensee is issued a citation and MRA does not accept the citation as is, a formal complaint "**must**" be issued. The rules do not provide any avenue to request a compliance conference or negotiate a settlement for citations, which is the common practice in place right now when they are issued. For a "formal complaint," the rules expressly allow for negotiating a settlement with the agency or requesting a compliance conference. That language is omitted from the citation rule (Rule 420.808).

The way it is drafted right now leaves the MRA with significant discretion as to what violations should receive warnings as opposed to citations, and to which licensees should receive warnings as opposed to citations. Warnings and citations can be issued and applied inconsistently across the state and across licensees. Assuming the MRA does issue both warnings and citations, there is nothing in the current rules to establish when each is appropriate. One licensee may simply receive a warning for something that a different licensee, who has an identical violation, receives a citation that is also accompanied by a substantial fine and will put that licensee in a more serious position to potentially lose its license. This creates, at the very least, the potential for the appearance of favoritism and retaliation, and could allow the MRA to effectively remove whomever it pleases from the industry through using the excuse of numerous citations to revoke a license, or to drown a licensee in fines. While the statutes do cap the maximum fines that can be imposed for license violations, it is a per day cap, and the case law in other regulated industries suggests that the courts will support an agency fining a licensee the maximum fine per day, for each day the licensee is out of compliance.

Further, there is nothing preventing the MRA from skipping over the issuance of a warning entirely and going directly to issuing citations, which are accompanied by a fine that is now seemingly non-negotiable.

Proposed Changes:

1. The first time something is found to be out of compliance, a warning is issued. The second time the same issue is found to be out of compliance at a subsequent inspection, it is a citation that is issued, etc.
2. Create a list of serious offense as opposed to minor errors or oversights (for example: having large jars of distillate not logged in Metrc being a serious offense, having a safety compliance employee not date the visitors log when she signs in a minor offense). Minor offenses receive warnings where it is clear it was an oversight or an error and as a first-time offense. (see below)
3. Place some kind of limitation on double jeopardy. Right now, licensees are receiving numerous citations for one single violation because the rules are very repetitive. (Example – having several large jars of distillate not logged in Metrc was citated as 4 separate violations because there are 4 separate places where the rules prohibit it) If the rules are repetitive, a licensee can only be fined once per instance.

Proposed new definitions:

"Violation" means a single event or occurrence which violates one or more of the rules. In situations where numbers rules relate to a single event or occurrence, only one single violation shall be issued per occurrence.

"Violation Affecting Safety or Health" means a violation that generally has an immediate impact on the health, safety and welfare of the public at large. This category of violations are the most severe, and may include: selling to person under the age of 21; medical marihuana sales to a non-patient; advertising to a minor; marihuana purchased from an unauthorized source; marihuana sold to an unauthorized source; refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties; or failure to track marihuana in METRC.

Rule 420.807 Warning.
Rule 7. (1) The agency may issue a warning to a licensee if the agency determines through an investigation that the licensee violated the acts, these rules, or an order.
(2) The agency shall issue a warning to a licensee who has violated the act, rules, or an order, provided it is the first offense of and is not classified as a violation affecting safety or health.
(3) A warning must be served on a licensee by certified mail, return receipt requested, or served in person by a representative of the agency.
(4) A warning must remain in the licensee's file for one year from the date of service.
(5) A warning may be considered in future licensing actions. Continued or repeated non-compliance or repeated warnings for the same violation may result in further action, including the imposition of fines or other sanctions against a licensee, or both.

Rule 420.808 Citation.
Rule 8. (1) The agency may issue a citation to a licensee if the agency determines through an investigation that the licensee violated the acts, these rules, or an order, and the licensee has already received a warning for the violation, when applicable.
(2) A citation must be served on a licensee by certified mail, return receipt requested, or served in person by a representative of the agency.
(3) A citation must contain all of the following:
(a) The date of the citation.
(b) The name and title of the individual issuing the citation.
(c) The name and license number of the licensee.

(d) A brief description of the conduct or conditions that are considered violations of the acts, these rules, or orders.

(e) A reference to the section of the acts, these rules, or orders that the licensee has allegedly violated.

(f) The penalties or actions required for compliance.

(g) A signature line for the licensee to agree and accept the terms and conditions.

(h) A timeframe to agree and accept the terms and conditions.

(4) A licensee shall have a specified time in which to notify the agency in writing that the licensee accepts the conditions set forth in the citation.

(5) If the licensee accepts the conditions set forth in the citation, the licensee, within the listed time frame after receiving the citation, shall sign the citation and return it to the agency along with any fine or other material required to be submitted by the terms of the citation. The citation and accompanying material must be placed in the licensee's file for 5 calendar years.

(6) A citation issued under this section will be published to the public.

(7) A licensee may provide a 1-page response to the citation. This response must be placed in the licensee's file and published.

(8) If the licensee does not accept the citation a formal complaint must be issued.

Rule 420.809 Formal complaint.

Rule 9. (1) After an investigation has been conducted, the agency shall serve the formal complaint on the licensee by certified mail, return receipt requested, or in person by a representative of the agency.

(2) The licensee may do either of the following:

(a) Meet with the agency to negotiate a settlement of the matter, or demonstrate compliance prior to holding a contested case hearing, as required by section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.

(b) Proceed to a contested case hearing as set forth in these rules and section 71 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271.

(3) The licensee must request a compliance conference or contested case hearing, or both, within 21 days of receipt of the formal complaint. If the licensee does not respond, the agency shall request a contested case hearing.

(4) If the licensee agrees and accepts the terms negotiated at the compliance conference, the licensee and the agency shall execute a stipulation.

(5) An executed stipulation is subject to review and approval by the executive director of the agency. If the stipulation is approved, the agency shall issue a consent order. If the stipulation is not approved, a compliance conference or a contested case hearing shall be scheduled. The consent order shall be published.

(6) If a licensee does not comply with the terms of a signed and fully executed stipulation and consent order within the time frame listed in the consent order, the licensee's license is suspended until full compliance is demonstrated.

(7) If a compliance conference is not held or does not result in a settlement of a compliance action, a contested case hearing shall be held, pursuant to these rules and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to MCL 24.328.

Notes:

In creating the definition for "Violation Affecting Safety or Health" we used several other states as a guide to determine what violates are the most severe. Almost all of them cited the same violations, so there do appear to be pretty standard violations other states agree are the most severe and relate to public health, safety, and welfare. Because of the way the MMFLA, MRTMA, and the APA are written, the agency does need to have some authority over when the

public health, safety, and welfare are at risk. However, other states also have similar constraints. By creating a definition with specific examples of situations in which there a public health, safety, and welfare concern, it does place some restrictions on inequitable enforcement, and provides the industry businesses with some predictability.

We also attached Washington's statute and Colorado's statute as examples for reference.

Language omitted "at the time of application" and additional supporting invalid rules.

Sections: Licenses, Rule 420.6(2)(g)

Problem:

The MRA eliminated the phrase "at the time of application" in its rule to deny an application due to a municipal ordinance. They also included the phrase "The agency determines…" which appears to add discretion for the agency and effectively alters the meaning of the statute in its application of the rule.

MCL 333.27959(3) "[T]he department **shall approve** a state license application and issue a state license **if** . . . the municipality . . . does not notify the department that the proposed marihuana establishment is not in compliance with an ordinance. . . in effect at the time of application."

Proposed Rule R420.6(2)(g)

"An applicant is **ineligible** to receive a state license **if** . . . the agency determines the municipality in which the applicant's proposed marihuana establishment will operate has adopted an ordinance. . ."

The way the rule was drafted has effectively subverted the meaning of the statute, and conflicts with the statutory language. In the statute, the burden is on the municipality to reach out to the MRA if they have an ordinance that was in effect at the time of application. It is not written to be a qualification for licensure, but rather something that can stop a license from being issued.

The way the rules are written place the burden on the MRA to determine whether or not the municipality has enacted an ordinance. In this context, it is written as a qualification for licensure that requires affirmative action on the part of the MRA and the municipality. Because MRTMA is an opt-out statute, the presumption for the MRA should be that every municipality is opted in until they are told otherwise. Therefore, there is no statutory authority for the MRA to be confirming the status or existence of an ordinance relating to marihuana in each municipality.

Proposed change:

R 420.6(2)

(g) The agency is notified by municipality in which the applicant's proposed marihuana establishment will operate that: i) the municipality has adopted an ordinance that prohibits marihuana establishments that was in effect at the time of application; or ii) the proposed establishment is noncompliant with an ordinance adopted by the municipality under section 6 of the Michigan regulation and taxation of marihuana act, MCL 333.27956, and in effect at the time of application.

Reinsert language in rules that was removed, and remove all rules inconsistent with Section 9.3 of the MRTMA Statute.

Advertising and Marketing

R 420.507(4)

(4) Marihuana product must not be advertised or marketed to members of the public unless the person advertising the product has reliable evidence that no more than 30 percent of the audience or readership for the television program, radio program, internet website, or print publication, is reasonably expected to be under the age listed in subrules (7) and (8) of this rule. Any marihuana product advertised or marketed under this rule must include the warnings listed in R 420.504(1)(k).

Problem:

Provisioning centers have been getting in trouble for advertisements with brand logos and being told the brands are products. Many brands make multiple products, so punishing businesses for advertising the brands makes the term marijuana product too broad. Moreover, marijuana manufacturing and retail facilities often have no control over brand advertising, as they do now own the brand, but are merely licensees.

Proposed language:

This section needs an additional (i) that says,

“marihuana sales locations may advertise certain brands for sale available at their location and this will not be construed as advertising marihuana products.”

Or

(1) A marihuana product may only be advertised or marketed in a way that complies with all municipal ordinances, state law, and these rules that regulate signs and advertising.

Northwest Confections Michigan, LLC
P.O. Box 266 | Eaton Rapids, MI 48827

February 17, 2020

Marijuana Regulatory Agency
Legal Section
PO Box 30205
Lansing, MI 48909

SENT VIA EMAIL ONLY: MRA-Legal@michigan.gov

RE: Public Comment, Adult-Use Marijuana Rules

Dear Executive Director Brisbo and Members of the Marijuana Regulatory Agency:

Please allow this document to serve as a public comment from Northwest Confections Michigan, LLC (d/b/a Wyld), in response to the proposed Adult-Use Marijuana Rules under consideration by the Department of Licensing and Regulatory Affairs and Marijuana Regulatory Agency. Northwest Confections Michigan, LLC is the Michigan branch of a multi-state cannabis organization responsible for curating and producing the Wyld brand of cannabis-infused edible confectionery, with products catering to both medical patients and adult-users. We are excited to join the Michigan cannabis business community, and share our products that have developed from our experience in the regulated markets in Oregon, Nevada, California, and Colorado.

Labor Peace Agreements

Aside from the regulated cannabis industry, there are no private businesses that are required to enter into a neutrality agreement with a bona fide labor organization. Forcing cannabis businesses to enter into a labor peace agreement as a condition of their business license places cannabis businesses, particularly new start-ups and under-capitalized entrepreneurs, at a distinct disadvantage compared to any other industry.

Labor unions have been vital in developing safe, equitable working environments throughout the United States for many workers, including but not limited to farmworkers, factory workers, nurses, teachers, and truckers. Regretfully, much of their success came as a response to horrific working environments requiring collective action and altercation, and in isolated cases, violent intervention. However, in no circumstance have labor unions succeeded in requiring that businesses come to the table in order *begin* operating. As currently stands R. 420.5(6) would require *all* cannabis businesses to enter into a labor peace agreement prior to completing the application process for their business license.

Apart from the potential conflict between this regulation and the NLRA, this proposed regulation will have catastrophically negative effects on new businesses' ability to thrive in the cannabis industry.

To be successful in the regulated marijuana industry, a business must maintain flexibility to accommodate the rapidly evolving regulatory environment. Rules change annually (at least), and because of the novelty of the industry, the cannabis industry is the newest, shiniest toy for legislators to improve, resulting in changes that affect operations at all levels, for better or for worse. Accordingly, such regulatory changes trickle down to the workforce, mandating flexibility at all levels.

Mandating a labor peace agreement does not, as a matter of course, result in unionization of a business. However, mandating a labor peace agreement for every business is a state-sanctioned foot in the door for unions in all businesses, regardless of whether the employees are interested in working with a union. Employees may, at any time, contact a union to seek information, and, together with other employees, begin a union drive to become represented. Such employees are protected from retaliation by federal and state employment laws. Such a course of action is contemplated by the NLRA; agreement by the employer to host a union, and state-required negotiation between the employer and the union, is not contemplated by the NLRA.

By requiring marijuana businesses to enter into a labor peace agreement as a condition of their licensure places a nearly insurmountable hurdle before every marijuana business: Negotiate with a private entity that may have opposite motivations for entering into an agreement, knowing that this entity is a gatekeeper to licensure. This regulation places the unions in an unfair bargaining position, and ultimately, allows the unions to veto businesses from receiving their license. We would respectfully ask that the current language mandating a labor peace agreement either be removed or be amended to offer an incentive to businesses to enter into a labor peace agreement.

Hemp Products

Currently, the use of hemp products in the regulated marijuana system is permissible, when the hemp is sourced from Michigan growers. While it is a noble goal to protect local hemp growers, such protectionism damages the regulated marijuana market by unnecessarily inflating prices for patients and consumers. A solution that has been reached in Oregon and Nevada, for example, has been to allow hemp grown, processed, and tested in accordance with the laws of its state of origin to be transported into the system, tested in accordance with the respective state's marijuana rules, and incorporated into products. This type of system ensures the safety and quality of the hemp to be sold in the regulated marijuana system, and also ensures that processors maintain adequate records and chain of custody for sourcing raw hemp and hemp commodities for use in their products.

We would respectfully request that the Proposed Rule 420.1002 be amended to reflect that a laboratory may perform tests on industrial hemp products "produced in accordance with the laws of the state of origin or the 2018 Agriculture Improvement Act of 2018" and require that processors retain chain of custody logs that validate the source material, post-harvest testing, and licensed grower and/or handler.

Licensing Requirements

We would also ask for some slight amendments be made to specific provisions of the licensing and notification requirements for applicants and licensees for adult-use (and medical) marijuana establishments. Namely, not placing a one-year expiration date on License Pre-Qualification determinations. Such a limitation inordinately accelerates the timeline for businesses to find, buildout, and permit a facility. In the event of an unscrupulous landlord, extended timelines for receiving building permits, and the unreliability of contractors in doing work, it is not unexpected to have a 18-24 month buildout. Requiring pre-qualified applicants to reapply due to circumstances outside their control is inequitable.

Additionally, the provision mandating notification of legal proceedings, as well as disclosure of legal proceedings during renewals is a needless burden. It is a significant amount of unnecessary documents to be submitted to the MRA, where an insignificant clerical error could result in a license violation or jeopardize the license renewal. Disclosure of allegations of non-compliance or regulatory interventions against a licensee or owner, whether by the MRA or other governmental entity, is warranted. However, private matters between companies or individuals (equity partners, employee theft, labor disputes, car accidents, workers' compensation claims, etc.) need not be disclosed, and the regulation should be tailored to only apply to criminal infractions, regulatory non-compliance, or such civil proceedings that would render the business unable to continue operations. Acceptance of risk is part of doing business, having one's business license review tainted by potentially frivolous, unsubstantiated claims, is an inequitable requirement to be levied against businesses.

Operational Requirements

One item to be addressed in operations for processors is the use of trade samples as applied to edible products. The trade sample rule applies specifically to raw flower, as well as to concentrate. We would request that a small provision be added to include edibles or other marijuana products, at a reasonable limit that would allow a business to sample all of its products to retail locations. Fifteen to thirty trade samples per recipient licensee would cover the majority of businesses producing processed marijuana products.

Thank you for your consideration.

Gabe Parton Lee
General Counsel, Northwest Confections Michigan, LLC

From: mytcbd@yahoo.com
To: MRA-Legal
Subject: Public hearing comments
Date: Thursday, February 13, 2020 10:54:42 PM

Good evening,
Thank you for listening to the public before adopting new rules to the already instituted framework. I made a public comment in person but wanted to follow up because I missed a few things that I wanted to address and then listening to other peoples testimony, there are things I want to voice my thoughts on as well. I used to own grocery stores in the family business until business got too tough for us, and then I left and got into this industry. I went thru the process of getting my licenses with the state for tobacco, SDM, and liquor. While I understand the intent to build a healthy foundation for businesses to operate in, and I feel like Michigan does a much better job than California, there is still much work left to do to make this right and feasible for everyone - not just big business and big pharma.

First and foremost, everyone (especially the retired 65-80 year olds who are getting cut off their opiates) are chatting and wondering why things are so tough for cannabis to be obtained legally and why all these hoops remain out there for businesses to establish themselves. In 2018, the voters voted to regulate marijuana the same as alcohol and tobacco. Generally speaking, the additional changes proposed do not honor the vote of the citizens and only adds more layer of governmental control. Cannabis should be accessible at farmers markets, it's a plant and should be treated like other plants and food with the extra oversight but not more than the same type of oversight as alcohol and tobacco.

1) Please do not write in specific zoning restrictions to the framework. Please allow the local municipalities to determine what is best in their jurisdiction. I spent a lot of time and money to draft a petition for a ballot initiative for the people to vote on and then I had to wait another 5 months because there was no election in NOV.. Now with you proposing changing that mid stream is a huge hardship on businesses while also taking the power away from the local municipalities or forcing them to rezone and make changes just to accommodate state requirements.

2) GMP standards should only be required for large corporations doing mass production over a threshold of at least 1M or more. GMP is not affordable for the small business and is not required for other food products. Please stop pushing the small guy out by having excessive regulatory compliance. Serv-Safe and food safety classes are available statewide and are affordable, OSHA compliance are all standard in the food marketplace.
Commercial kitchen and cottage industry laws should apply. Nothing more than that makes sense if the voters rights are truly honored. Businesses with less than 1M in food revenue should be required to have lab tested, homogenized proven doses. Keep it simple for the small guys please!

3) Labor peace agreements should also have a threshold of 1M or more in gross profits or more than 10 employees. The reason is that if a business is big enough to profit that much, then they should be forced to adhere to standards above that of which the rest of the state requires. As a small business owner, I know if I pay people well, I will have better employees, and stronger community and so on. But if I were forced to pay a bunch of money to be in a union to follow all this protocol, my chances as a small business owner to operate let alone grow would be staunched. OSHA, FMLA, EEOC, and all the state and federal rules apply to other businesses, why force businesses to join the union. It seems to me like unions have outgrown their need. We have laws in place, and if companies behave in poor taste and treatment of their employees, then due diligence should include having their license revoked and each license holder/owner become ineligible for at least 5 years for any state license for cannabis. That will set a standard far greater than that of a union where big $$$ and people entrusted with power creates another chain of corruption, etc.

4) I absolutely agree with the MCIA that Processors should be allowed to keep product frozen and fresh, not just the cultivators. There is a significant benefit to having the plant remaining in tact.

5) I suggest THC maximum potency levels - vapes not to exceed 85%. I am a huge full spectrum fan and

would like to see distillate completely removed from the marketplace. While I know that will never happen, we all know distillation is a refining process that strips away the benefit of the plant so the only value is for the increased psychoactive potential.

I would suggest any vape over 85% be treated like how we treat Everclear vs Popov vodka. Likewise, potency less than 5% (not .3%) of delta 9 THC (not THCA combined) should not fall under the MG content for industrial hemp oil, flower, THC tinctures, THC edibles etc. This could mitigate the loss as a whole for hemp farmers while giving the marijuana CBD strains a little more legroom to operate in.

6) I'd like to see a protection clause for business owners not being able to be harassed by local government and other cannabis businesses. People have opinions and are entitiled to them, but those direct attacks should not hurt business owners who are working on getting licensed or are licensed. I suggest this due to public comment of an African American lady getting sued because of her existing location. I'd like to see a department within the MRA that handles investigation of bad business practices, lawsuits, and specifically geared at enforcing the protection of the rights of the businesses who have worked hard and spent a lot of time and money to get where they are today.

7) Caregivers should be able to sell any of the products they produce to all licensed access points - retailers, processors and cultivators. Let the caregivers get in the game so they can build up to being a stronger tax payer where they can get licensed. Please don't let the caregivers be put in harms way for bad local politics like what happened to the dispensaries getting shut down prior to the MMFMLA framework and licenses being issued. If any business licensee is found with other drugs, then they need to get on the bad kids list and lose their license for 5 years. Hard drugs are the problem, and anyone benefitting from the legal marketplace that turns around and fuels the illicit marketplace should have tough sanctions put against them for continuing pumping bad drugs into our communities.

8) I agree with the cultivator plant count, it should be flowering plant count not at a certain height.

9) I'd like to see grant money made available to those businesses doing right by their communities. For example, I have started a non profit, Free Relief that helps cancer patients and veterans with PTSD. I am struggling to be funded and I don't have 500k to dish out to go thru the FDA process for complying with those guidelines to qualify as a "research" in order to get grant monies. Either a kickstarter, incubator or a way for someone like me, who is truly wanting to give away free "weed" (but it's THCA so it's non psychoactive!) to people who can't afford it that need it, I'm asking you to please help me help others. If I can prove to you my ethics of how I'm behaving out here, those funds that were partly set aside to help fund efforts such as research for veterans with PTSD could help me help others and increase the awareness that the plant can be used as medicine and you don't have to get high from marijuana to have the benefits.

10) Consuming licenses - I love this concept but it's ridiculous to not allow consumption of food and beverages at the same place as consuming cannabis. We know food is a requirement for safer alcohol consumption, why would we treat THC products any different? If people take too much THC or misuse it (which they will), then they will learn when they learn. Same as the alcoholic. We can't take the drink away from the alcoholic, they have to make that decision for themselves. Please don't try and limit the opportunities of other businesses to support and engage in the cannabis community. Those restrictions continue to inhibit the benefits of the plant by allowing a new "stigma" to be formed.

11) I really really appreciated the efforts of the environmentally sustainable advocates and innovators. That lady from Oakland college has some genius ideas on water and environmental sustainability. I'd love to see monies set aside to support companies to innovate equipment and technology that would help our manufacturing facilities find new opportunities to thrive and develop a stronger state in all areas. I think tax credits for businesses who spend the extra $$$ to go the extra mile for our planet, our energy, our water, our waste - those companies who commit and prove they are helping reduce our carbon footprint should get kickbacks.

12) I agree with licensees getting extensions if they have been approved and yet have to wait on contractors etc to get the next level of inspection done. Maybe another background check to ensure nothing has changed is the remedy for ensuring nobody slips by for being a naughty business person

while waiting to get above board in their operations. If they screw up while they are waiting on their contractors etc, then they shouldn't be able to move forward or at least they should get pushed back. But good standing businesses who are working hard to get the job done and it takes longer than the states timeframes should not have to pay the fees and go thru the whole process over again.

13) Take drug testing off the docket for businesses in Michigan - start with state employees, let them use cannabis. Encourage businesses to become socially responsible for "recovery" from addiction. Whether it's drugs, alcohol, sex, food, shopping, gambling, etc... The biggest thing we can ask from our government is to help us use taxpayer dollars into fueling a healthier more sustainable community that has support for all. Inclusion, diversity, social equiity, and addiction treatement services should all be at the top of the list when it comes to the MRA supporting the endeavors of the aspiring cannaprenuer.

I'd love to the the MRA step up to the plate, help join in the war against the opiates, and help make access truly available and affordable to the public at large. Thank you kindly for your consideration, support and for all of your hard work!

Sincerely,
Kelly Young

Kelly Young
CEO
My TCBD Inc.
http://www.mytcbd.com

"Believe in yourself and others will follow your inner light"

From: Richard LeBlanc
To: MRA-Legal
Subject: Statement In Opposition to the Proposed "Marihuana Delivery Business" License
Date: Tuesday, February 18, 2020 1:43:15 PM

Dear Mr. Brisbo and members of the Michigan Marihuana Regulatory Agency:

As you deliberate the proposed Joint Permanent Rules for the licensed Marijuana industry, I ask that you consider my personal opposition to the proposed Marihuana Delivery Business License. While the proposal may have been well-intentioned, a Delivery Business License will likely bring with it significant unintended public safety consequences.

Municipalities cannot prohibit delivery businesses, and delivery businesses are not required to seek municipal authorization for licensing. A freelance "Marihuana Delivery Business" License will be very challenging to oversee from a municipal perspective, and arguably impossible to regulate.

Until the State of Michigan has addressed fully the potential serious adverse effects these licenses could have on our youth, on both Marijuana consumers and non-users, and on the health, safety and welfare of Michigan's communities, I request respectfully that as you deliberate the proposal, you elect to decline advancement or approval of a "Marihuana Delivery Business" License. Thank you.

Regards,
Richard LeBlanc
734-751-9366 personal mobile telephone

Westland resident currently serving as Westland City Clerk
Former State Representative 2007-2012 (term-limited) – 18th District